

# NORTH AMERICAN REVIEW

NO. DCLXXII

NOVEMBER, 1911

## SHALL WE MAKE OUR CONSTITUTION FLEXIBLE?

BY MUNROE SMITH

IN July, 1909, a constitutional amendment, empowering Congress to tax incomes, from whatever source derived, was approved by the Senate unanimously and by the House of Representatives by 317 votes to 14. At the present time, this proposal has been ratified by the legislatures of thirty-one States, containing seventy-three per cent. of the population of the forty-six States. Strong as this support is, it is insufficient, and it is far from certain that the amendment will secure the additional ratifications that are necessary for its adoption.

The power of a small minority of the States to nullify the will of the great majority of the people of the United States has existed so long and is so familiar to us that it is not without an effort that we realize how extraordinary our constitutional situation really is. In what other Federal union would a vote of two-thirds of the constituent States, including nearly three-fourths of the population, be insufficient to change the law? In what other nation, possessing representative institutions, would a measure supported by so large a majority of the people fail of effect? The tax measures which the British House of Lords recently opposed were supported by a far smaller majority of the British people; and not only has the opposition of the House

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of Lords been overridden, but the position of that House as a co-ordinate factor in legislation has been destroyed.

When the framers of our Constitution provided that amendments should require the assent of three-fourths of the States, they were trying to escape from the restraints of a still more rigid constitution, amendable only by the consent of all the States; and in order to accomplish their purpose they were compelled to override the existing law. It could not have been their intention to make the new Constitution unchangeable except by another *coup d'état* or revolution. In fact, under the conditions which existed at that time, the majority which they decided to require was not hard to obtain. In spite of sectional differences of sentiment and opinion, the social, economic, and political conditions of the thirteen original States were sufficiently uniform to make general agreement upon important matters far from difficult. Not only was the Constitution accepted by more than three-fourths of the States within less than a year, but in the following sixteen years twelve important amendments were adopted. During this period, and as late as 1820, a similar facility of agreement was exhibited in presidential elections. Of the first nine elections, two were unanimous, a third was practically unanimous, and two others were carried by a five-sixths majority of States. But after 1820 the conditions changed. In addition to the widening gulf between the free and the slave States, there were increasing divergences of a more permanent character. In New England and in the middle Atlantic States commercial and manufacturing interests were becoming preponderant, while the southern and north central sections remained substantially agricultural. The rapid settlement of the interior of the country produced Americans of a new type, with new social ideals. In the latter part of the nineteenth century there appeared a group of western mining States with specific interests of their own. The political effect of these changes has been marked. In the twenty-two Presidential elections from 1824 to 1908 inclusive, the winning party carried three-fourths of the States but three times: the Democrats in 1852; the Republicans in 1868 and in 1872. In each of these years the political situation was peculiar. Pierce carried twenty-seven out of the thirty-one States, not because the country had become overwhelmingly Democratic, but because the Whig party had gone to pieces.

Grant twice carried more than three-fourths of the States, because the North had been solidified by a victorious war and the southern States were occupied by northern troops. At this period, however, for the first time since 1820, a political party had the power to change the organic law, and in the years 1865-1870 the thirteenth, fourteenth, and fifteenth amendments were ratified—the only amendments that have been made since 1804.

If the income-tax amendment be adopted, it will not indicate that conditions have again changed and that general agreement has again become easily attainable. This amendment comes before the country under very exceptional auspices. Proposed by a Republican President and passed by a Republican Congress, it is supported by Democrats as an essentially Democratic measure. It has the further advantage of presenting itself not as an innovation, but as a restoration. It accords to Congress a power which that body had previously exercised with the approval of the Supreme Court, and of which it was deprived only because the Supreme Court reversed itself. The rejection of this amendment, indeed, would go far to prove that formal change of the Constitution is impossible, but its adoption should not unduly elate those who desire further amendments.

## I

Some of the evils which result from the rigidity of our Constitution are too obvious to need argumentative exposition. It is to-day a commonplace that law must change with the changing needs of the society which it serves. As a matter of fact, our organic law has been developed and even changed in many respects in which the Constitution has not been formally amended. The war powers of the President are based upon the unwritten constitution; they exist because they have been repeatedly exercised with the support of Congress and the somewhat reluctant acquiescence of the courts. The Presidential electors have ceased to elect; they have become keys in an adding-machine which records popular majorities in the several States; because the people of the United States, acting through their party organizations, have so decreed. In the same way, the action of State legislatures in voting for Federal Senators has, in many of our States, become a mechanical function, the legislators giving a purely formal sanction to

decisions rendered by the voters in party primaries. The implied powers of Congress are now more numerous than those expressly granted in the written Constitution; they have been developed by their exercise, with the approval of the Federal judiciary in those matters of which the Federal courts have jurisdiction. The power of the Supreme Court to annul acts of Congress which it deems unconstitutional, whether clearly deducible from the text of the Constitution or not—a point on which a difference of opinion is still admissible—actually exists because the court has asserted this power and the executive and legislative branches have submitted to its exercise. In our national governmental system, this process of change by the establishment with general consent of new governmental custom has been necessitated by the practical impossibility of formal constitutional amendment. Development along these lines, however, cannot go beyond a certain point. There has already been at least one crisis in our national life which clearly demanded the amendment of the written Constitution: it should have been possible to put into the Constitution some such check upon the extension of slavery as was contained in the Missouri Compromise. And to-day it is coming to be generally felt that additional powers should be accorded to the national government, and that some of the existing constitutional restraints upon State legislature should be relaxed. There are many pressing problems which, apparently, can be solved only by conferring upon the Federal government powers which can hardly be implied by the boldest interpretation of the written Constitution; and the satisfactory solution of many industrial problems by the several State legislatures is impeded by the very broad protection of private rights which is expressly contained in the Federal Constitution or has been read into it by judicial decisions. When the point is reached at which our Federal Constitution cannot be bent by the economic and other social forces which it now checks, there is danger that it will be broken.

The effort to bend the Constitution to meet new social needs, and the tendency to evade its restrictions when these appear harmful, may be justified on the ground of necessity; but progress along these lines has many undesirable results. Evasion of law does not increase respect for law, and the lack of respect for law is already one of our national vices. Further, the attempt to evade the law and to justify its

evasion is unfavorable to intellectual integrity, to straight thinking and honest speech, on the part of our legislators, and also, in second instance, on the part of our judges. To cite a recent example, there was not a little apprehension in Congress that the bill for establishing postal savings-banks would be found to be unconstitutional; accordingly the investment features of the bill were so remodeled as to make it possible for the Supreme Court to uphold this measure as an exercise of the Federal borrowing power. Senator Bailey hardly went too far in pronouncing this a "palpable subterfuge."

Farther reaching and more serious are the effects of our rigid Constitution on our politics. It is charged by foreign critics, and conceded by many Americans, that our parties have no principles and are simply agencies for filling offices. This state of things is usually and rather cheaply ascribed to the corrupt tendencies of human nature; more particularly to the apathy of the virtuous and the energy of the unscrupulous. If, however, we are willing to look a little more deeply into the situation, it will seem at least possible that our parties have no use for principles because they would not be able to put them into practice. Mr. Roosevelt's New Nationalism would be an excellent party programme if the results that he desires could be attained without amending the Constitution; but in view of the practical impossibility of securing the necessary amendments in the constitutional way, his propaganda began, and has for the present ended, in criticism of the Supreme Court because that tribunal has not developed our constitutional law along new nationalistic lines. Whether Mr. Roosevelt's strictures are justified or not is here beside the question. His attitude is cited to show the difficulty of building up a party pledged to radical reform measures, when it is obviously impossible for a party to redeem such pledges. If a party that can carry a Presidential election by a fair majority of electoral votes could also amend the Constitution, a strong national party might well be formed with a programme more radical than Mr. Roosevelt's—a programme which men of conservative temper would probably term socialistic. Under such conditions, conservatives would no longer be able to rely upon the rigid Constitution and the Supreme Court to protect property interests; they would be forced to organize a party representing their principles. Even a conservative,

if a broad-minded man, might view such a result with satisfaction. National parties would then represent something besides the scramble for office, and their leaders would probably be men of a different type from the majority of our practical politicians.

Perhaps the most regrettable effect of the rigidity of our Federal Constitution is the position in which it places our judges. Partly by the express provisions of the Constitution, partly by what have seemed the necessary implications of that instrument, but largely by virtue of established custom, our courts exercise a control over legislation that has no precedent in legal history and no parallel in any modern State. They are the guardians of our constitutional law, and, so far as their jurisdiction extends, they have the power to deny legal operation to acts passed by representative legislatures if in their opinion such acts are unconstitutional. In so doing they are understood to give effect to the will of the sovereign people as against the unauthorized acts of the people's agents. The courts, however, are also subject, in theory, to the will of the sovereign people; and from their decisions appeal (in a political sense) runs to the people. By amending the Constitution the people may authorize the legislature to pass again, and this time with full legal effect, the law which the courts have vetoed. In all cases in which the judicial veto is based upon the provisions or implications of a State constitution, such an appeal is of practical value, for our State constitutions are easily amended. In cases, however, in which the judicial veto is based upon the provisions or implications of the Federal Constitution, the right of appeal to the sovereign is illusory, because the sovereign can speak with legal effect only through the legislatures of three-fourths of the States. Practically, therefore, the judicial veto of State legislation, as contrary to a State constitution, is a suspensive veto only; but the judicial veto of State or Federal legislation, as contrary to the Federal Constitution, is absolute. As regards State legislation, this absolute veto may be interposed either by a State court or by a Federal court; and under the existing law the veto interposed by a State court is not subject to review in the Supreme Court of the United States.

In the minds of conscientious men, power carries with it a sense of responsibility; and in determining whether national or State legislation is or is not constitutional our

judges have been increasingly influenced, consciously or unconsciously, by their opinion of the wisdom or unwisdom of each measure submitted to them. The accumulating mass of decided cases has come to contain so many judgments or dicta representing different points of view that it is seldom difficult to find equally satisfactory arguments for the allowance or disallowance of any law which is neither clearly constitutional nor clearly unconstitutional.

The control which our courts exercise over State and national legislation has been regarded by most American publicists, and by some foreign authorities, as the most admirable feature of our political system. The American people, so far as its sentiments can be inferred from its acts, has always regarded this control as inconsistent with democratic principles. Feeling that the judges were exercising functions essentially political, the people of the more democratic States have made their judges elective; and now, in some of our States, they are proposing to subject judges to the "recall." Our Federal judges are protected against such attacks; but question is being raised whether their veto power cannot be limited if Congress sees fit to exercise its recognized powers to determine the jurisdiction and to regulate the procedure of the Federal courts.

It seems clear that the criticism of the courts, which is now so rife, and the "attacks upon the judiciary," which are becoming so common, spring from the natural resentment of a supposedly self-governing people against the absolute veto which the courts are interposing with increasing frequency upon State and national legislation. A suspensive veto is the fullest power which our political theory has ever accorded to the judiciary; and this degree of control over legislation would be regarded by all, except the most radical advocates of "people's rule," as a desirable check upon hasty and ill-considered measures. To this degree of control the courts would be limited if the people of the United States could amend the Federal Constitution with anything like the ease with which the people of the several States amend their State constitutions.

## II

It is obvious that the only line of escape from the existing situation, except through revolution, lies in the amendment of the amending clause of the Federal Constitution.

As soon as this problem is stated two questions arise: first, what more workable method of amendment seems best adapted to our dual system of government; and, second, what changes in the amending clause would probably stand the best chance of securing the assent of three-fourths of the States?

Our form of government obviously requires that the will of the people of the United States be expressed through their State organizations. The reference of constitutional amendments to the people of the United States, irrespective of their State organizations, would be unthinkable unless the qualifications of the voters were determined by Federal law. Whether such an increase of the power of the Federal government is desirable or undesirable is beside the present question. All that here concerns us is the fact that an amendment to the amending clause, burdened by such a provision, would have no chance of adoption.

A proposal to lower the proportion of State votes necessary for ratification from three-fourths to two-thirds could possibly be carried; but even a superficial study of our political history will show that such a change would be of little practical advantage. In the twenty-two Presidential elections held since 1820 there have been, in addition to the three cases noted above in which three-fourths of the States were carried by the victorious party, only three cases in which two-thirds of the States were carried. This exceptional degree of success was attained by Jackson in 1832, by Harrison in 1840, and by Roosevelt in 1904. The election of 1904 was the only one since 1872 in which the winning party carried even two-thirds of the States; and Roosevelt's majority, like the far greater majority secured by Pierce in 1852, was due less to the strength of his own following than to dissension in the opposing party. Even if it be assumed that in 1904 the same number of States would have ratified an amendment proposed as a Republican party measure, the possibility of achieving such a result once in thirty-two years would hardly meet the exigencies of the situation.

A proposal that constitutional amendments should be ratified by a simple majority of the States would, in view of the great disparity of their populations, be met by the same arguments by which the requirement of a three-fourths majority is usually justified. With the admission of New Mexico and Arizona there will be forty-eight States. If

the twenty-five smaller States—using the term with reference to their populations simply, irrespective of their areas—were able to carry an amendment against the voice of the twenty-three larger States, we should have less than one-fifth of the population of all the States prevailing over the other four-fifths; and, if we further assume that the opinion of the people of these twenty-five States was divided and that the affirmative vote represented in each State a bare majority, we should have the will of the people of the United States determined by votes representing one-tenth of the total population.

Such computations may interest the arithmetical mind, but politically they are meaningless. At no period in the history of the United States have the smaller States been lined up against the larger either in national elections or in the votes on constitutional amendments. If, indeed, it were proposed to diminish seriously the political influence of the smaller States—if, for example, it were proposed that the votes in the Electoral College should be distributed in proportion to population—these States might stand together against the rest of the Union, but not on any other sort of issue. They are an arithmetical, not a geographical nor an economic group. The list includes commonwealths as widely separated as Maine and Washington, Arizona and Florida. It includes ten agricultural States and fifteen States in which manufacturing and commercial interests are preponderant. If all these twenty-five States supported a candidate or a measure, it is inconceivable that any considerable number of the larger States would be found in opposition.

It is politically possible, however, that a narrow majority of larger and smaller States, containing less than half of the population of all the States, might be lined up against a minority of States containing more than half of the total population. In the southern and central sections of the Union agricultural interests predominate more or less strongly; in the northeastern and far western sections manufacturing and commercial interests are preponderant. It is possible, as the writer has found by experiment, to construct along these economic-sectional lines several slightly varying divisions of the States, in each of which twenty-five southern and central States, with from 43 to 49 per cent. of the population of all the States, might prevail over

twenty-three northeastern and far-western States, with from 57 to 51 per cent. of the total population. And, since the manufacturing States are increasing in population more rapidly than the agricultural States, the disparity of population in such alignments would tend to become greater.

If, then, we abandon the principle of demanding more than a simple majority of the States for the ratification of constitutional amendments, we must abandon also in this matter the principle of the complete equivalence of State votes. The votes of the several States must be weighted more or less in accordance with their population. Such a change would be in harmony with democratic principles; and such a departure from the policy of the framers of the Constitution could be defended by arguments based upon the analogy of the Electoral College and upon the greatly increased disparity of State populations. In 1800 the largest of the States, Pennsylvania, had nine times the population of the smallest, Delaware; to-day the ratio between these two States is thirty-eight to one, and that between New York and Nevada is one hundred and eleven to one.

Twenty-one years ago, in his *Political Science and Constitutional Law*, Professor John W. Burgess formulated a plan for the amendment of the amending clause of the Federal Constitution which deserves more consideration than it appears to have received. Briefly stated, his plan is as follows: proposal of amendments by two successive Congresses, Senators and Representatives acting in joint assembly and resolving by simple majority vote; submission of proposals to the legislatures of the several States, these again acting in joint assembly and resolving by simple majority vote; assignment to each State of the same weight in the count of votes as in a Presidential election, and ratification of amendments by a simple majority of the State votes thus weighted. In Professor Burgess's opinion, the purpose of a written constitution is not to enable a minority to thwart persistently and successfully the matured and deliberate will of a clear majority, but to insure the formation, on the part of the majority, of a purpose that is matured and deliberate. Accordingly, while he reduces to a simple majority the proportion of votes necessary for proposal and for ratification, he lengthens the period of proposal; and in requiring the reconsideration of a proposal

by a succeeding Congress, he gives an opportunity to the country to express its opinion in the election of a new House of Representatives.

This plan is not only logically consistent in all its details, but it seems to meet the exigencies of the situation. With the power to propose and the power to ratify constituted on the same basis as the power to elect a President, it is clear that any party able to secure control of the national government could carry any amendment to the Constitution which could survive the test of examination and discussion for two years. It is another question, however, whether this plan, if placed before the country and fully discussed, would be approved in three-fourths of the States. The people of the larger States and all persons who hold opinions at once national and democratic would probably feel that, if the States were to be weighted at all, they should be weighted according to population; while the people of the smaller States and all who hold fast to the equality of the States would surely object to the possibility, however theoretical and remote, that a minority of States should outvote a majority. This second group of States and persons, moreover, would undoubtedly object strongly to the suggestion that amendments be proposed in joint assembly of the two Houses of Congress, on the ground that the equal representation of the States in the Senate is the one complete recognition of the equality of the States. To expose a majority of Senators to the possibility of being outvoted in a joint assembly of the two Houses would be regarded as an inadmissible sacrifice of the Federal principle. It is doubtless for these reasons that Professor Burgess's plan has not elicited greater support; and it is probable that the objections above noted, theoretical as they are, would militate seriously against its adoption.

It is the object of this paper to suggest a scheme of amendment which seems simpler, which retains the existing agencies of proposal and of ratification, which recognizes the Federal principle of the equality of the States as well as the democratic principle of majority rule, and which, therefore, may possibly encounter fewer objections than that proposed by Professor Burgess. The plan is briefly as follows (*italics indicating changes*): proposal of amendments by the majority vote of both Houses *in two successive Congresses*; submission of such proposals to the legislatures of the sev-

eral States or to conventions in the several States *or directly to the voters in each of the States*, as one or another of these modes of ratification may be proposed by Congress; and ratification of proposals *by a majority of the States, provided that the ratifying States contain, according to the last preceding enumeration, a majority of the total population of all the States.*

The plan here outlined accepts Professor Burgess's suggestion that an amendment proposed by one Congress must be accepted by a second Congress with a newly elected House of Representatives before the proposal may be submitted to the States. In addition to the arguments for such delay cited above, which seem conclusive, it may be noted that this longer period of consideration and discussion will probably produce proposals of superior precision. The language of some of the amendments, especially that of the latest amendments, is less clear than that of the original Constitution. The pending income-tax amendment is so worded that expert opinions differ on the question whether it does or does not empower Congress to tax the incomes derived from State and municipal bonds. Its acceptance in New York was jeopardized by this discovery; its acceptance in other States may be prevented by the existing doubt as to its probable effect. If it had been necessary to hold this proposal over for reconsideration in the Sixty-second Congress, the point raised by the Governor of the State of New York could have been met before the amendment went to the State legislatures.

The addition of the direct vote of the people of each State to the modes of ratification now authorized seems to be warranted by the fact that this method of ratification has long been generally employed for the amendment of our State constitutions. If the Federal Constitution be not modified in this sense, the provision requiring consent by legislatures or conventions will probably be evaded in much the same way in which similar provisions excluding direct popular action in Presidential elections and in the choice of Federal Senators have been evaded.

The most important feature, however, of the plan here suggested is the proposal to lodge the final power of amendment—the truly sovereign power in our system—in a majority of States containing a majority of the total population of all the States.

## III

That a political device accords with accepted political theories and seems logical and consistent will not definitively commend it to any politically minded people, least of all to a people of English traditions, until they are reasonably sure how it will work.

The first and most obvious criticism of the plan here proposed is that under it an amendment might be defeated by the united action or inaction of the ten most populous States, which at present contain a majority of the population of the forty-eight States, while under the existing three-fourths rule thirteen non-acceptances are requisite. Accordingly, instead of facilitating amendment, the proposal seems to make it more difficult. Here again we have a theoretical possibility that is practically not a possibility. The ten largest States are New York, Pennsylvania, Illinois, Ohio, Texas, Massachusetts, Missouri, Michigan, Indiana, and Georgia. It is not conceivable that these ten States should be aligned either for or against any measure, with thirty-eight States massed on the opposite side. It is not imaginable that Massachusetts and Pennsylvania should be found acting in harmony with Georgia and Texas, unless nearly all the States in the Union were of the same mind. Nor is this a recent situation. In no Presidential election since the admission of Texas to the Union have these ten States voted for the same candidate. Behind the political antitheses lie differences of social and economic conditions. In three of these States the race problem is serious; the others are little affected by it. Texas and Georgia are agricultural States; Massachusetts, New York, and Pennsylvania are States in which manufacturing interests outweigh agricultural interests; in the other five States the interests of agriculture, on the one hand, and of manufactures and commerce, on the other, are more evenly balanced.

It may be added that a consideration of the rate at which population is increasing in the Far West, as compared with the Northeast, makes two predictions fairly safe: first, that in 1920 no ten States will be found to include a majority of the total State population; and second, that California will be certainly one of the ten, and possibly one of the seven, most populous States—a change which will widen the geographical distribution of this arithmetical group.

Under the plan here proposed, as under that proposed

by Professor Burgess, any political party strong enough to elect a President might endeavor, with reasonable hope of success, to amend the Constitution; for throughout our political history the candidates who have secured a majority of the votes in the Electoral College have regularly carried a majority of the States containing a majority of the population of all the States. In two cases the States were equally divided; in 1848 Taylor and Cass each carried fifteen States, and in 1880 Garfield and Hancock each carried nineteen; but no candidate has ever received a majority of the total electoral vote from a minority of States. And in one case only did the majority of States whose electoral votes were counted for the successful candidate fail to contain a majority of the population: in 1876 the seventeen States which the returning boards and the electoral commission left in the Tilden column contained nearly a million and a half more inhabitants than the twenty-one States allotted to Hayes. Except in these three instances, the rule above stated seems to have held good, even in elections that were fairly close. Lincoln's first election is commonly cited as the classical example of a minority victory; but in 1860 Lincoln carried eighteen States, and these States contained more than sixty per cent. of the total population of the thirty-three States, and, of course, a much larger majority of the free population. From 1884 to 1896 inclusive the division of the States in Presidential elections was very close, and Republican and Democratic victories alternated; but in each instance the successful candidate carried one or two more States than his opponent, and in each instance the States ranged on the winning side included a majority of the population of all the States.

The national majorities or pluralities which political statisticians delight to compute usually follow the same lines. Under our system, such computations have only a theoretic interest; and even from the point of view of political theory it is questionable whether a popular majority in a national election has any significance as an indication of the general will, because of the diverse conditions under which the suffrage is accorded in the different States. And if, on the principle of "counting heads instead of breaking them," majorities or pluralities of votes are fundamentally significant as indications of power—of fighting power, if that should be needed—it is clear that when a country is

divided into antagonistic sections, a party that carries, by narrow majorities or pluralities, a section containing a considerable majority of the total population is really stronger than a party that carries, by overwhelming majorities, a less populous section; for, if it comes to fighting, the former party, although a minority party in the original count of total votes, will command all the resources and exert the whole physical power of the more populous section which it controls, as the Republican party did in the Civil War. Dynamically, Lincoln was not a minority President.

In a country so large as ours has grown to be, both in area and in population, and in which the social conditions and economic interests are so diverse, sectional groupings are bound to appear. It is, perhaps, the greatest defect of the existing method of amendment that it enables a single section, if it contains one more than one-fourth of the States, to arrest the development of a national policy. How will the plan of constitutional amendment here proposed work as regards the balance of power between the chief sections of the United States? And how will it work as regards the balance of power between the diverse economic interests which chiefly create significant sectional groupings?

The first of these questions may be answered very briefly. No group of States that can be regarded as a political section includes a majority of the States or contains a majority of the population of the States. The northeastern group, which consists of New England, the middle Atlantic, and the east north central States, contained as recently as 1880 a majority (52 per cent.) of the population of all the States, which then numbered thirty-eight. Of the total population of the forty-eight States this northeastern group has now, however, but 48 per cent. Accordingly, under the plan proposed, no section could impose its distinctive policies on the other sections, nor could any section arrest the development of a national policy.

That divergent economic interests may produce alignments of States quite different from any that have heretofore appeared in our politics is in a measure indicated by the attitude which the States have thus far taken on the pending income-tax amendment. Since this amendment is presented under non-partisan auspices, it has not divided the States on party lines, although it has received stronger support in the Democratic States. If, however, we analyze the

vote by sections, the results are more interesting. In New England it has been ratified by one State only, Maine; in the middle Atlantic States by one only, New York; and in the entire Northeast (including Delaware) the vote is 7 for and 8 thus far against. The South is not yet solid on this proposal, but with Oklahoma it stands already 11 to 4 for ratification. In the sixteen Western States (New Mexico and Arizona not having yet qualified) the record stands 13 for the amendment and 3 thus far opposed. This different attitude of the different sections is closely connected with their respective economic interests. The distinctively agricultural States and those States in which agricultural interests are practically equal to manufacturing and commercial interests stand for the amendment 19 to 5; and if from this group we isolate those States in which more than 60 per cent. of the adult males are engaged in agricultural pursuits, we find that all these States, ten in number, have ratified the amendment. On the other hand, the States in which manufacturing and commercial interests preponderate have voted 12 in favor, 10 thus far against; and if from this group we isolate the States in which the manufacturing interests alone outweigh the agricultural interests, the record is only 4 in favor with 7 thus far against. And if we isolate the States in which manufactures and mechanical pursuits employ more than 60 per cent. of the adult males, we find that but 1 of these States, New York, has ratified the amendment, while 5 have not. The vote on this amendment thus shows a striking tendency toward a division of the States on economic lines, with the agricultural States on one side and the manufacturing and commercial States on the other.

How would the proposed plan of ratifying constitutional amendments affect the balance of power between these interests? Of the forty-eight States twenty-three may be classed, according to the Census statistics of occupations, as manufacturing and commercial States. The twelve States in which manufacturing interests are preponderant contain more than 30 per cent., and the eleven States in which the combined interests of manufactures and commerce outweigh those of agriculture contain nearly 21 per cent. of the population of all the States. The manufacturing and commercial States accordingly form a minority of the States, but they contain a majority of the total popula-

tion. On the other hand, the twenty-five remaining States, which may be classed as agricultural States, contain only 49 per cent. of the total State population. Under the proposed plan, accordingly, neither group could carry a constitutional amendment against the solid opposition of the other group. If the margin of two per cent. of the total State population seems a narrow one for the protection of the manufacturing and commercial interests, it must be remembered that, in the nature of things, this margin will increase, because the population of the manufacturing States is increasing more rapidly than that of the agricultural States. On the other hand, now that the whole continental territory of the United States, except Alaska, is occupied by organized States, the margin of State votes which protects the agricultural interests is practically unchangeable, except by a change in the industrial character of the agricultural States themselves. If, however, the United States should eventually become essentially a manufacturing and commercial country, it would be in accordance with sound political theory that the manufacturing and commercial interests should be able to shape the law by the open process of peaceful change; for otherwise they would assuredly either assert themselves by corruption or change the law by revolution or *coup d'état*.

Is it futile to hope and visionary to believe that such a reform as is here outlined can be accomplished? Considering the tenacity of conservative sentiment and the strength of the conservative interests that will probably be aligned against such a change, prophecy would be hazardous. Sooner or later, however, it will be generally realized that the first article in any sincerely intended progressive programme must be the amendment of the amending clause of the Federal Constitution; and if this change should be resisted only by those who believe that the Constitution framed for the Atlantic seaboard in 1787, and last amended in 1870, meets fully and at all points the needs of the nation to-day, and that it can be adapted, without formal change, to meet the needs of the generations of Americans yet to be born, such an amendment would be ratified, not by thirty-six States only, but by the unanimous voice of all the States.

MUNROE SMITH.

# THE DEFICIENCIES OF LAW AS AN INSTRUMENT OF INTERNATIONAL ADJUSTMENTS

BY REAR-ADMIRAL A. T. MAHAN, U.S.N.

IN previous articles in *THE NORTH AMERICAN REVIEW*,\* I have endeavored to sustain the thesis that Arbitration, which from its nature and the very etymology of the word presupposes necessarily a tribunal and a code, is not adequate to all the work of Diplomacy, for the final conclusions of which it is proposed as a substitute. I decline entirely to admit that the opposition is between Armaments and Arbitration. This is the form of the contention—"Law in place of War"—which is attempted to be imposed by those who favor Arbitration, not only general but unlimited, on the ground that, as they conceive, all disputes between nations can be brought under the category of legal, by being ranged and classified under a system of laws. My insistence is that this is not possible, because under any classification there cannot but remain always cases in which the right is one of morals and expediency—in other words of policy—not susceptible of legal definitions, because the preciseness of these deprive them of the elasticity necessary to successful international adjustments.

As a concrete case, an illustration, is always more easily understood than a general principle, let us take at once the Monroe Doctrine; and in doing so the remark is immediately pertinent that a Monroe Doctrine is by no means the peculiar possession of the United States. During the recent dispute between France and Germany concerning Morocco, a rumor has gained currency that France was contemplating the cession to Ger-

\* May, July, September, 1911.

many of the Pacific island Tahiti, in part compensation for the relinquishment by Germany of claims to interfere with French action in Morocco. The rumor was probably without foundation, but it aroused immediate jealousy in New Zealand on the ground of local interests. In the New Zealand Parliament, a question on the subject was asked by the leader of the Opposition. A New Zealand paper said:

"The proposal shifts the storm center to our very doors. The planting of another strong German colony in the Pacific, with the added advantage of a suitable naval rendezvous, is fraught with grave issues for New Zealand, for Australia, and even for South America and the United States."

Another journal, not of New Zealand, but of Australia, referring to the rumor,

"condemns British apathy in the Pacific in the past, and urges that the Commissioner for Australia, resident in London, be instructed to protest to the Imperial Government against such a cession."

I guard myself from implying any share in the apprehension concerning the effect upon the United States of a transfer of Tahiti to Germany. When the Caroline and Ladrone Islands were about to be ceded to Germany by Spain, after our war with Spain, in 1898, I received more than one letter urging me to use any influence I could exert to induce our Government to resist the step. My reply was that, besides having no influence, I saw no sufficient reason for our opposition. But, waiving this personal explanation, in what matter of principle does the objection of New Zealand and of Australia differ from the assured objection of the United States to the acquisition by Germany from Denmark of an island in the West Indies? The reason is the same; namely, the wish to avoid "a storm center at our very doors." But upon what basis of legal right can this be founded? Upon none. How shall a law be imposed making such a sale not legal? The *London Times*, commenting on the New Zealand proposition, says: "Insufficient regard seems to have been paid to the fact that French property, whether in the Pacific Islands or elsewhere, is at the sole disposal of France." That is, as regards legal right, Great Britain has no ground for interference. This is substantially what I said in my article of July. Translated into terms of our Monroe Doctrine, the *Times* comment would read, "Insufficient regard seems to be paid to the fact that Danish property, whether in

the West India Islands or elsewhere, is at the sole disposal of Denmark." There is no legal ground for objection, and a tribunal could decide only that the transfer would be lawful and valid.

The British Prime Minister, however, had indicated already in the British Parliament the qualification which policy imposes upon assent to a legal transaction. Any bargain between France and Germany was beyond the scope of British interference, whether by word or deed, unless it should lead to arrangements prejudicial to British interests. In such event, he said, intervention might become "our duty in defense of British interests, directly affected by further developments." In other words, the legal right of one country, or of two countries, may so far contravene the natural—that is, the moral—right, the essential interests, the imperative policy, of a third, that resistance would be necessary and therefore justifiable. Diplomacy then enters, and Armament is simply an incident of Diplomacy; just as, in an arrangement between two contestants in private life the fighting power of each, the relative positions of advantage as concerning the matter in dispute, affects the process of the discussion and the ultimate arrangement.

Another curious illustration has been voiced in Austria, concerning the Mediterranean, by an extremist; who, however, has been elected recently President of the Austrian Chamber, as representative of the strongest Parliamentary group, and who consequently is a man with a following.

"We Austrian Germans wish to bring about harmony between the Mediterranean Powers. I am coining, perhaps for the first time, an idea. . . . That idea is, the Mediterranean for the Mediterranean Powers. This is directed especially against a Power which has its hands in all the affairs of the world and wants to drive back Germanic Germany."\*

This is merely individual, without backing in official expression; but taken in connection with the very large proposed increase in the Austrian navy, officially adopted, and officially designated for Mediterranean service only, the utterance is not without significance; just as Jefferson's early utterance, in some sense comical, seeing his unwillingness to develop force—to back diplomacy with armament—"We begin to broach the idea that all within the Gulf Stream is neutral (*i. e.*, American) waters" was a kind of precursor of the Monroe Doctrine—America for the Americans.

\* *The Mail*, August 4, 1911. Page 3.

The point I wish to make, however, is that the Monroe Doctrine is a moral question, based upon considerations substantially just, one of natural right, of policy, not of legal right; that a legal standing for it cannot be established by a general code of law, though it may by specific treaty agreements; and that in these respects it does not stand alone, but is reproduced where similar conditions obtain, though not necessarily with equal imperativeness. It is the reflex, as against distant outsiders, of the instinctive impulse toward self-preservation, and as such represents natural right—which is moral right—as opposed to legal. In international affairs this is home rule *versus* centralization, the latter of which is the goal of unlimited Arbitration.

If we are to think accurately concerning the sphere of Arbitration, as propounded by its extreme and most logical advocates, we must recognize that the object of their attack necessarily is not Armament, but Diplomacy. The attempt is to carry all cases into court instead of arranging them outside by compromise or adjustment. It is true that as the case stands the proposition is diplomacy first, arbitration only in case of diplomacy failing; but diplomacy will fail more readily when one of the parties think that it will gain substantially by insisting on arbitration — going into court. Between individuals compromises or adjustments proceed, necessarily, partly on grounds of right, partly on grounds of expediency, which recognizes the presence of power—otherwise of force. Each party possesses certain elements of claim, either rightful or plausible; can give a certain amount of trouble; or exercise a certain pressure; or propose a certain equivalent. It is a case of attack and defense quite as really as a military operation, from which it differs exactly as diplomacy, when successful in its normal processes, differs from war. That is, the force is there, is recognized, and is operative. If collision—law-suit—can be avoided, so much the better; but the force has counted all the same.

I refrain, of course, from quoting again the instances cited in previous articles in which Diplomacy within recent years has effected adjustments, without war, through silent force; which force has been simply the expression of national power and advantage, used in the instances cited, of Austria and Bulgaria, for ends morally right, but not sustainable in law. National power is surely a legitimate factor in inter-

national settlements; for it is the outcome of national efficiency, and efficiency is entitled to assert its fair position and chance of exercise in world matters, not restricted unduly by mere legal tenures dependent for their existing legality upon a prior occupancy, which occupancy often represents an efficiency once existent but long since passed away. The colonial empire of Spain, unimpaired a bare century ago, now wholly disappeared, is a familiar instance. The Empire of the Turks is another. The present intervention of Italy in Tripoli is but a further step in a process of which Bosnia, Herzegovina, Bulgaria are merely the most recent examples. The supplanting of preceding dynasties in India by Great Britain, and her supervision over administration in Egypt, are again illustrations. By what system of law is provision to be made for solving such questions?

Can that which has just been said be condemned fairly as simply a less bald way of affirming that might makes right? No; although certainly it does affirm that the existence of might is no mere casual attribute, but the indication of qualities which should, as they assuredly will, make their way to the front and to the top in the relations of States. Once Prussia counted for less than Holland in international balances. Such qualities, capabilities, not only confer rights, but entail duties, none the less real because not reducible to legal definition; such as the interference of the United States and of Great Britain in 1823 on behalf of South American independence, and of the United States alone, backed by the silent arms of Great Britain, in Cuba in 1898. It is only when opposition between national forces ceases, because one or more nations become exhausted, or are recreant to duty, that the might of some one, becoming unconditioned, incurs the risk, and the imminent probability, of excess and decay, like all absolute power. Rome and Carthage, Louis XIV., Napoleon, are familiar instances. Great Britain after Trafalgar illustrated the same on the seas; but she was saved by the opposing forces of the Continent. The Monroe Doctrine itself is such an instance of national force opposing the intrusion of other force in settlements such as have been cited. It is local power asserting that it will withstand the beginnings; will not permit distant power, perhaps mightier than itself, to be established at its very doors in a position involving national danger. This also illustrates the safeguard against the consequences which

might be inferred from the proposition that national power, being essentially national efficiency, is entitled to claim its sphere of extension and of opportunity. The co-ordination and balance of international factors, like the balances of powers in a constitution, secure a firmer basis of general welfare than mere legal adjudication, which can be only partially applicable to the community of nations.

It is perhaps a sense of this bearing of the Monroe Doctrine that, in the public discussions of the pending treaties of general arbitration with Great Britain and France, has caused the doctrine to be characterized as a matter of "domestic policy." I presume the expression must have proceeded from some fairly representative American quarter, as I find it in the Washington correspondence of the *London Times*,\* the excellence of whose foreign correspondence is known. The correspondent scarcely evolved it from his own inner consciousness. To describe the action of the United States, in forbidding one European State to purchase from another European State a piece of its American property—say a West India naval station—as a measure of "domestic" policy has a slightly humorous aspect; and indeed is so characterized by another English paper. Yet in a sense the definition is accurate, because such transfer does affect vital interests as by us conceived, and these certainly may be described as a matter of domestic policy. Although a case under the Monroe Doctrine is susceptible of legal adjudication by what may be styled the common law of international usage, in no American quarter is there any proposition to submit it to arbitral decision, or even to throw it open to discussion as to its legality; for, as affirmed in its earliest formulation, it is essential to a sound American policy by a necessity which neither knows nor admits external law.

Curiously and interestingly, simultaneous with the framing of the recent treaties of general arbitration, in the brief interval between their final conclusion and the signature in Washington, the British Government, dealing with the current dispute between France and Germany about Morocco, found itself compelled to a most deliberate and formal pronouncement of its purpose, in all events, to protect "vital interests and national honor," by force if necessary, although the case might present no legal ground for such contingent action.

\* August 4, 1911.

The representative of the Government selected to make this important announcement was the Chancellor of the Exchequer, Mr. Lloyd-George, who cannot be suspected of militarism or of extravagant imperialism. Although a principal member of the same Cabinet, the difference of view in such matters between himself and the Premier, Mr. Asquith, and the Foreign Secretary, Sir Edward Grey, is sufficiently known. It is difficult to believe that there was not deliberate purpose in choosing for the mouthpiece of the Government a person so identified with opposition to war, and with expenditures upon social reform which war would postpone indefinitely. The significance of the occasion was enhanced by the ready extempore speaker reading the carefully worded sentences of his speech.

After expressing, incidentally, his satisfaction at the prospect of a happy issue to the negotiations for a Treaty of General Arbitration with the United States, Mr. Lloyd-George continued:

"But I am also bound to say this—that I believe it is essential in the highest interests, not merely of this country, but of the world, that Britain should at all hazards maintain her place *and her prestige* amongst the Great Powers of the World. Her potent influence has many a time been in the past, and may yet be in the future, invaluable to the cause of human liberty. It has more than once in the past redeemed Continental nations, who are sometimes too apt to forget that service, from overwhelming disaster and even from national extinction. I would make great sacrifices to preserve peace. I conceive that nothing would justify a disturbance of international good-will except questions of the gravest national moment. But if a situation should be forced upon us in which peace could only be preserved by the *surrender of the great and beneficent position* Britain has won by centuries of heroism and achievement, by allowing Britain to be treated where her *interests are vitally affected* as if she were of no account in the Cabinet of nations, then I say emphatically that peace at that price would be a humiliation intolerable for a great country like ours to endure. *National honor* is no party question." \*

The phrases "vital interests" and "national honor," carefully excluded from the recent treaties of general arbitration—the exclusion of which was indeed a chief object of the treaties—appear here again in terms and in full force; not by mere implication, but in distinct assertion relatively to a pending political situation unsettled at the moment of speaking. Nor this alone. Equal stress is laid upon the right of the nation to play its part in the world, to assert it-

\* *The Mail*, July 24, 1911. My italics.

self as a factor in international relations; to sustain by force, by national efficiency, its position—"prestige"—and its influence among States; to assert the qualities which entitle it to a place in the front; all which are attributes distinct from, and in excess of, such simply inherent rights as vital interests and national honor. No inefficient State could take the same position. The incident is the more significant in that, so far as the public knows, the initiation of the treaties with the United States was due to a member of the same Government, Sir Edward Grey, speaking upon the naval ship-building competition between Great Britain and Germany in March last; taking up then and indorsing President Taft's suggestion in December that *all* questions, including vital interests and national honor, should be submitted to judicial arbitration, where such was applicable. Sir Edward Grey's utterance then, being in Parliament, was of course the utterance of the Cabinet. That of Mr. Lloyd-George, though not in Parliament, was made under conditions equally responsible.

In view of the various interests cited, here and before, it would seem that while vital interests and national honor may be submitted at times to judicial arbitration, the field for such submission is greatly limited by specific conditions, not amenable to classification; the more so, because there are questions, probably many, which, while susceptible of judicial decision because applicable law exists, nevertheless contain chances so contrary to the public interest, to domestic policy, to natural right, one's own or another's—as Cuba in 1898—that reservation of them must be made. Such cases are more easily adjusted by the flexibility of diplomacy than by the rigidity of law.

The solid basis upon which general arbitration may produce beneficial results was well expressed in another speech of Sir Edward Grey's.\* In this, without formal definition, he indicates the limits which Great Britain feels that expediency places upon treaties having this object in view.

"Anything like war between the United States and the British Empire would be so violently opposed to the deepest sentiments and feelings of the people in both countries as to be unthinkable. This made the ground between the two nations especially favorable for an arbitration treaty of an extended kind. If they wished to build a house which was to be secure, he imagined that they would choose to build it on a

\* *The Mail*, May 24, 1911. My italics.

site which was not liable to earthquakes. There were political as well as territorial earthquakes, but the *respective national policies* of the two countries made it *certain* that they were not liable to political earthquakes; *that there was no conflict of national policy*. In the United States they had no intention of disturbing existing British possessions. They had a policy associated with the name of Monroe, the cardinal point of which was that no European or non-American nation should acquire fresh territory on the continent\* of America. If it be, as I think it must be, *a postulate of any successful arbitration treaty* of an extended kind that there should be no conflict or possibility of conflict between the national policies of the nations which are parties to it, this condition is assured between us."

In like spirit the London *Spectator*† comments:

"The United States is the one country in the world our differences with which we can commit to arbitration without any reserve or misgiving, because she is the only country besides our own which is content with the *status quo*."

Most Americans will gladly accept this hopeful prognostic concerning the future relations of the two nations; yet Sir Edward Grey's speech by its reservations sufficiently shows that in his judgment the General Arbitration Treaty between Great Britain and the United States cannot safely be accepted in Great Britain as a type for all occasions and all nations. As to Great Britain herself, it may be well to remember a recent very distinct divergence of political view, in which the Senate of the United States prevented the nation from committing itself to a treaty which might have proved extremely awkward at the present moment.

In 1900, the Executive of the day concluded the Hay-Pauncefote Treaty, by which the long-standing Clayton-Bulwer Treaty was abrogated and the particular interest of the United States in the Panama Isthmus and Canal recognized. The treaty provided that no fortifications should be erected commanding the Canal or the waters adjacent. On account of this stipulation the Senate rejected the treaty, which then was recast, and Great Britain, while not conceding explicitly the right to fortify, assented by silence, the question of fortification not being mentioned. This is the treaty which now fixes the relations of the two countries with reference to the Panama Canal.

The Executive of ten years ago was willing then to aban-

\* It is perhaps well to interpose that the American objection goes beyond the continent, and includes islands geographically American.

† August 19, 1911.

don a claim upon which the Executive of to-day strongly desires to act, and is acting, with the support of Congress. The Senate of 1900 saved the situation for 1911. Although the site of the proposed fortifications has now become United States territory, which in 1900 it was not, the first treaty, if ratified, would have afforded at least a basis for opposition by Great Britain to the legality of fortification; and there is also no certainty that her silence on the matter even under the second treaty proves consent, as a legal proposition, then or now. Even under all existing conditions the right to fortify has been disputed by eminent authority in the United States. If a treaty of general arbitration had been in force when the decision to fortify was reached, what—under the first treaty at least—would there have been to prevent Great Britain demanding arbitration, and insisting that in its judgment the question was open to legal adjudication because of the treaty; although since its ratification the Canal Zone, the site of the fortifications, had become United States territory? Only the postulate stated by Sir Edward Grey—the absence “of conflict between the national policies.” Subsequent cession does not relieve territory from previous liens upon it of a third party; just as the sale of a house does not invalidate a pre-existing mortgage.

Historical illustration, which is simply the citation of cases and precedents, amply shows the insufficiency of law as an instrument in composing differences. By insufficient I do not mean that it is not sufficient in many instances, possibly in most; but that the exceptions are so numerous that legal classification cannot fully embrace them, and therefore another instrument than law, than arbitration, is in such cases required. In the matter of instruction, no theoretic discussion, however ample and lucid, affords a substitute for historical illustration.

Several such illustrations of very recent date have been adduced in this and previous articles. One much more ancient, yet entirely analogous, and demonstrative that the instrument used must be adapted to the end in view, is afforded by the history of liberty in England. The early Stuart kings, notably Charles I., with great care based their oppressive actions upon law; upon law obsolete in the sense that the progress of the nation had rendered inapplicable methods which in previous years had been applicable, but

still law existing unrepealed. International Law, as law, has similarly to treat as legal a claim which may have issued in intolerable conditions. Claims of such character could have been alleged for the forcible retention of the American colonies by Great Britain, and of the Spanish colonies by Spain, up to and including the deliverance of Cuba; and such law must govern any tribunal. The judge decides what the law is, not what it should be.

Concerning the Stuart oppression, the latest and most distinguished historian of the period, Dr. Rawson Gardiner, after remarking that "it was impossible to allow any mere interpretation of the law to decide the question at issue" between King and Parliament, used an illustration which in the light of this year's events is singularly striking.

"Suppose it should happen that the House of Lords placed itself in deliberate opposition to the House of Commons, even after a general election had shown that the House of Commons was in accord with the feelings of the constituencies. Suppose that the House of Lords rejected every bill sent up to it by the Commons. What would be the use of applying to the judges as arbitrators? They could but decide that the Lords were legally in the right. They could not decide whether they were politically in the right."

The imagined case has occurred, not in all particulars, but in substance. The inadequacy of the law has been recognized; and the British Government of the day has obtained by political action, of the nature of threatened violence, that to which law, as an instrument, proved inadequate. A political instrument was employed when the legal instrument—recourse to a court—could not but fail. In the case of the Stuarts the political instrument used was armed resistance.

In the intercourse of nations diplomacy is the analogue of the discussions out of Parliament which preceded the recent use of force by one party to this dispute. In the one kind of contention as in the other, recognized force lay in the background. It is in neither a principal; in both it is an agent. The positiveness inherent in the very idea of law, its lack of elasticity, renders it too frequently inadequate to the settlement of certain classes of disputes, because in the cases an accepted law exists, decision in accordance with which would simply perpetuate injustice or sustain intolerable conditions.

A. T. MAHAN.

# AMERICAN AND CANADIAN POLITICAL METHODS

BY HENRY JONES FORD

THE fact that to some extent American settlement of the Canadian Northwest is a reflux of Canadian people facilitates the entry into Canadian politics of some who have had experience in American politics. John Thompson was a child when his father emigrated from Ontario into the United States, and as he grew up he took a hand in the political game and saw how it was played at the county-seat and at the State capital. The family made a good turn by selling their land in the United States and taking up land in the Canadian Northwest. After the family had taken root in the new field, John Thompson got into politics again, and eventually became a candidate for election to the provincial parliament. In the United States this would involve manœuvring for the support of the party organization to get a place on the regular ticket. Candidates are in the field for the offices of sheriff, clerk of court, registrar of wills, district attorney, treasurer, comptroller, coroner, various judgeships, etc., and legislative candidacy must fit in with all this other candidacy. In addition, there are various party officials to be dealt with—the county chairman, the district committeeman, the State chairman, the ward leader, and others. Then primary elections are held, delegates are elected, conventions meet, and there is a furious struggle over the lucrative offices, those less valuable figuring as make-weights in the combinations of influence formed to control convention results. Thus in the end the legislative nomination may be an award in the interest of somebody's candidacy for sheriff or judge.

Nothing of the kind confronts a Canadian candidate. There is no clerk, sheriff, attorney, or judge to be elected.

Elections are confined to choice of representatives and all administrative officials—executive or judicial—are appointed. Each constituency is a political unit. There is no county chairman or State chairman to be dealt with, no delegates to be elected, no conventions to be held. There are no primary election laws. All that a candidate need do is to file his nomination with a few indorsers and with the deposit of a sum of money calculated to be sufficient to cover the cost of printing and distributing the ballots. But while the legal requirements are easy to satisfy, there are moral requirements that are exacting. Inasmuch as there is no established party machine to run politics, a candidate is the more dependent on volunteer support. The organization on which he must rely is a committee formed in aid of his candidacy, gathering contributions and sending out speakers and canvassers. So unless a candidacy appeals to public support, it is ridiculous and futile.

In Canada there is a prejudice in favor of a sitting member so long as he is willing to stand for election. This is not so strong as in England, and moreover members are not so keen about retaining their seats as in England, for attendance in a provincial capital is very different from living in London. So enough members drop out from one cause or another after a five-year term to change about two-thirds of the membership of the legislative assembly. A candidate may offer himself in any constituency, and it has happened that a leading politician has been elected in more than one place, whereupon he makes his choice as to which constituency he will represent. But while every constituency has free range of choice in choosing a representative, that makes it only the more difficult for a candidate to impose himself upon a constituency. It is easy to enter the race, but impossible to make a respectable showing without a genuine call to public service. In the United States, if by hook or crook one can get on the party ticket and thus be hidden away in a big bunch of names, the party vote may carry anybody through. But there are no party designations on Canadian ballots. Since the only persons voted for in any district are those offering themselves as representatives of that particular constituency, the ballots contain only a few names, but they must needs be those of men whose personal reputation is such as to assure voters both of their party connection and of their individual ability. If

only one nomination is made, no election is held, the candidate being returned as unopposed; and this often happens, saving the constituency the cost and disturbance of a campaign.

In ordinary circumstances John Thompson would have had to show himself to be a useful and public-spirited member of the community, by years of activity before he could expect preferment; but the death of a sitting member made a vacancy for a new man, and the constituency was so strongly American that John Thompson's candidacy was thought to be fitting. The government party pitched upon him as a desirable representative of their interests, and he received such assurances of support as to warrant the filing of his nomination papers.

Throughout the process of election the candidate was impressed by the great difference in conditions between the United States and Canada. But he found a still greater difference when summoned to the provincial capital to attend a session of the legislative assembly. There is no regular time fixed by law, save that the assembly must be convoked once a year, and not over twelve months must intervene between sessions. So every year the Government calls the legislature together, fixing such time of meeting as may be deemed convenient; but it is the practice to issue a summons promptly after a general election. John Thompson had a lively recollection of the hurly-burly that attends the gathering of an American legislature. Party chairmen, local bosses, lobbyists, and applicants for office from all parts of the State are present. Conferences are going on as to who shall be Speaker, and how the important committees shall be distributed. The newspaper correspondents send off columns of matter on the phases of the struggle, and as to the relative chances of this boss or that in getting hold of the corporations committee or other valuable segment of the legislature. County and city delegations are meeting to discuss apportionment of legislative patronage among the members. The struggle culminates in the party caucuses in which each party names candidates for the leading offices in the organization of the legislature. Then comes the struggle over the distribution of legislative jobs, in which members are pestered by contending claims for such posts as page, messenger, clerk, secretary, janitor, door-keeper, and even scrubwoman.

There were no such scenes when John Thompson obeyed the summons to the provincial capital. The Speaker sits simply as a moderator, and there was no wrangling over his election. The legislative assembly has few committees, and forms them by the action of a committee on selection made up from among the older members. Nobody applied to the member for a job; he had none to give. Appointments in the service of the legislature are made by the Government without confirmation or ratification by any other authority, just as in all other branches of the Canadian public service. In practice clerical assistance to the legislature is made largely by details from the regular civil service. It is against the rules for any member of the legislative assembly to propose any expenditure whatever unless first recommended by the administration. So what money the legislature grants for the public service in any field creates patronage in which it does not share. Hence its natural tendency is to keep down the appropriations just as it is the natural tendency of an American legislature to expand them. In 1908 such contrasts as these appeared north and south of the line, in amounts paid to legislative employees: Manitoba, \$6,623.85 as against \$69,477 in Minnesota and \$31,861 in North Dakota; British Columbia, \$2,590 as against \$30,756 in the State of Washington.

Thus the way in which public authority is organized relieves the member from the service as office broker that presses upon the American legislator. Canadian legislators have time to think about general interests. So far as talk ran upon politics at all, it related to the measures which the Government would lay before the House, for it is a settled principle that it is the business of the administration to anticipate and provide for all public needs. As a matter of fact the eve of the session is devoted more to social amenities than political discussion, as the basis for the latter is not laid until the Government programme for the session is announced. Instead of meeting in a hurly-burly, the legislature began work in a serene and leisurely fashion, and the new member found that he did not have much to occupy his time save to become acquainted with his colleagues.

In an American legislature, as soon as the organization is completed there is a flood of bills on every conceivable subject. Legislators are expected to act as bill promoters;

their services are claimed by all sorts of interests, and they are continually importuned for support of this measure and that. John Thompson found that in this respect, too, Canadian methods protect him. As a result of the constitutional provision that no appropriation can be made unless requested by the administration, it would be useless to ask a member to introduce any bill creating an office, board, commission, or institution maintained at public expense. This shuts out a great volume of bills that descend upon an American legislature. Members are also protected by the fact that a private bill of whatever nature must be advertised in advance of the meeting of the legislature, and filed with the Clerk of the House together with the deposit of a fee for considering the bill. The rules of order of the Manitoba assembly require a fee of \$100 for a bill not exceeding ten pages, with \$10 additional for each page over that number. This is a regular source of revenue in all English commonwealths, and is duly accounted for as such. The receipts from this source in Ontario in 1908 amounted to \$9,833.50; in Manitoba in 1907, to \$2,800; in British Columbia in 1909, \$12,120. The term "private bill" practically covers every species of incorporation or grant of franchise. The form in which such bills must be put is prescribed. For instance, the rules of order of the legislative assembly of Manitoba contain what is designated as a "model bill for the incorporation of a railroad company," and applicants have only to fill in the blanks left for inserting particulars as to location of road, gauge of track, capital stock, the extent to which bonds or other securities may be issued per mile of road constructed.

Thus the member was exempt from any sort of pressure or servitude in the matter of offices, appropriations, or franchises. He was entirely free to introduce any public bill he saw fit, provided it did not propose a tax or an appropriation. An American legislator would introduce his bill and seek to have it referred to a favorable committee. In Canada a member must hand to the Clerk a written notice of his bill, which notice appears in the record of the proceedings. Two days later it is in order to ask leave by written motion to introduce the bill, and such leave is usually granted, although it may be refused by the House. If leave is granted, the Clerk turns the bill over to the Law Clerk for revision before it is sent to the printer. When

the bill comes up for a second reading, which in an American legislature is the stage of amendment, it is Canadian practice to refer the bill to a special or standing committee. Public bills introduced by the Government, on reaching their second reading, are usually put at once on the calendar for consideration by the House sitting as a Committee of the Whole. Thus conditions are such that there is not much inducement for members to propose bills in competition with the administration initiative, and in practice a Canadian legislature will have to consider less than 150 bills in the course of a session, while the bills introduced in an American legislature range from 1,200 to 4,000 in the different States. The conditions which permit congestion of the legislative calendars are peculiar to the United States. Swiss legislatures consider few bills, and no proposal is entertained until it has been referred to the administration for examination and report. The British Parliament, legislating for an empire, receives less than one-third the number of bills a session that come before the smallest American State legislature, and only about one-eighth the number introduced at a session of the New York or of the Pennsylvania Legislature.

Thus the member found himself very much in the position of a director sitting to consider business submitted by the management of the concern, whose chief officers are present to answer questions and make explanations. As members do not themselves have any access to the public treasury, their natural inclination is to watch sharply those who do have such access. The effect is very marked in the public accounts. The administration saves itself trouble by making them exact, full, and specific. The "Public Accounts" of the province of Manitoba start off with a complete balance-sheet; then follows a condensed statement of receipts and expenditures; then comes an itemized statement of receipts and expenditures for every department of the government—executive, legislative, judicial. Under the Attorney-General's department are set down all that was paid on account of court sessions, prosecutions, witness fees, pay of detectives and constables, maintenance of jails, prisons, and reformatories. Under the head of Education one will find the name of every person employed and the amount paid, with schedules of all purchases of supplies, all outlay upon building or repairs, with the amount of each

bill and to whom paid. The Manitoba "Public Accounts" for 1909 make an indexed pamphlet of 134 pages, but it covers all the operations of government and includes information impossible to obtain in any American State, although stacks of reports are piled on the desk of an American legislator and comparatively few printed reports reach the Canadian legislator. The difference is so marked, and of such constitutional importance, that it is worth while to go into some details.

In American States public authority is dispersed among numerous departments, boards, and commissions, each managing in its own way some piece of public business. These separate and distinct bodies apply to the legislature for such grants of money and authority as they desire, and at every session reports of their operations and statements of their needs come in by scores. They are too numerous to be even read, much less considered, and the legislature is not in a position to exercise real control even in the matter of expenditure. As a rule, American public bodies practise only fidelity accounting. So much money has been received and so much money has been expended, each board or commission stating only its own accounts. Totals of receipts and expenditures appear in the reports of the treasurer and of the comptroller, but these reports are based upon collections, appropriations, and disbursements. The treasurer's responsibility is satisfied if he can show provision of law for the issue of his warrants. General balance-sheets and ledger accounts classified by subjects, as in the bookkeeping of a business house, are not presented by American public documents. Thus, with masses of reports and numerous accounts before them, an American legislative assembly really knows little about the details of government, and moves in a fog of uncertainty and suspicion.

The functions of a Canadian province are more extensive than those of an American State. The Government of Manitoba builds and operates telegraphs and telephones, and owns and operates court-houses, prisons, hospitals, and asylums such as in an American State are left to the control of local authorities. The transactions of municipal government are regularly supervised, and some State aid is given to municipalities. Nevertheless, all control with full information centers in the legislature. If a legislator wants to know anything about any matter of fact or policy in the

conduct of any public office, a responsible official is present to answer. The rules of order give a preferred position to "Questions put by Members" on two days of every week of the session. Nobody in an American State has the opportunities of information possessed by every member of a Canadian legislature.

Every Canadian official holds office subject to a recall immediate in its action if applied. The administration may be turned out of office any time by a vote of the legislative assembly. Officials are appointed not for definite terms, but during good behavior, of which the administration is the judge, and no appeal lies from its decisions. Canadian courts cannot entertain actions for unlawful dismissal such as are frequently brought in American courts. Judges themselves are not exempt from control, although in the Canadian system the control is vested in the Dominion Parliament. Any judge may be removed upon the address of the Dominion Parliament, and since the administration rests upon a parliamentary majority this virtually puts the matter within the discretion of the administration.

This dependence of every official—executive or judicial—on the discretion of the administration would be regarded in this country as provocative of gross abuses. If every administration had power to make a clean sweep of the offices, American political experience might cause it to be inferred that a continual scramble for the spoils would be the inevitable result. But such opinion leaves out of account the important fact that a Canadian administration has no occasion to use patronage to get the legislature to consider the public business. An American administration is dependent upon the favor and good offices of members of the legislature to get the measures in which it is interested put into legislative shape, carried through the various stages of consideration, and finally put to vote. Hence executive patronage is systematically bartered for legislative favor. A Canadian administration is not dependent upon anybody's favor or good offices to get its measures before the legislature. It is its constitutional right to propose its measures in such form as it deems best, explain their character, and bring them to vote. The legislature may vote them up or down, but cannot avoid meeting the issue. In such circumstances it would inconvenience the administration to have a mutable and demoralized service. There would be

much to lose and little, if anything, to gain by changes, unless made for reasons that can be avowed and upheld under criticism. Hence in practice the servants of the public constitute a permanent staff not affected by changes of administration. It is not by limitations of power, but by pressure of responsibility, that good government is secured.

It is easy to see that such conditions make the position of member of the legislature a position of more dignity in Canada than in the United States. An American legislature is but one among many public bodies upon which power has been conferred by popular vote. A Canadian legislature is the depositary of all public authority. It has no rivals or co-ordinates. No officers of State have been elected by the people other than the members of the legislature. Thus the members are really and truly the representatives of the people, the organ of the will of the people. This explains the difference in tone and behavior that one notices between legislative bodies north and south of the boundary-line. Popular characteristics are much the same, but the class of office brokers, claim-agents, spoils-hunters, and lobby servants who get into American legislatures are practically excluded from Canadian legislatures simply because there is no field for their arts and crafts. The character of legislative bodies is not determined by the choice of the people. Choice is practically limited to those who offer themselves. The quality of the offerings is determined by the conditions in which the members must act. The conditions repel from American legislatures abilities attracted by Canadian legislatures, and *vice versa*, so that in each case the general character of the membership is adjusted to the environment. If the tone of a legislative body is below that of the community from which it issues, that is evidence of defect in the constitutional system.

As the work of the session went on, the member found himself in a very different situation from that which would have confronted him in an American legislature. There the bills were distributed among numerous committees that were supposed to see that they were properly drawn and correctly engrossed. In the Pennsylvania Legislature there are 32 Senate and 39 House committees; in the New Jersey Legislature, 23 Senate committees, 28 House committees, and 18 joint committees. None of the Canadian provinces now have two legislative chambers except Quebec and Nova Scotia. Mani-

toba abolished her Upper House in 1876, and now everywhere along the border from Lake Ontario to the Pacific Ocean all public authority is vested in one body—a legislative assembly elected by the people. Only eight standing committees are provided for in the rules of the Ontario Legislature. The rules of order in Manitoba and in British Columbia do not specify any number of committees, but in practice as many as eight are usually appointed. They act for the House in giving hearings and collecting information on matters referred to them, but the fact that bills have been referred to committees for consideration does not prevent the House from considering the same bills if it sees fit. The rules of the Ontario assembly, which have served as a model for the Western provinces, explicitly declare that “the various clauses of all bills, public or private,” even after reference to a special committee, “are subjected to the criticism of the Committee of the Whole.” American committees are virtually segments of the legislature, with party representation on each committee. In theory every bill is subject to the direction of the legislature, and a committee may be discharged from consideration of a measure or ordered to report at a given time. In practice, the great mass of bills and the mutual dependence of members upon one another preclude interference with the committees, and the fate of most bills is in their hands. Such conditions afford endless opportunities in America for secret and irresponsible control of legislative action, and the outcome thereof, as seen in the statute-books, is the subject of continual complaint from the people. In Canada, conditions are different and hence results are different.

Owing to this difference of system, the member was not bothered by a swarm of lobbyists, promoters, emissaries, and casual loafers in lobbies and committee-rooms. Indeed, there was no room for such crowds as usually hang around an American legislature. The buildings in which Canadian legislatures meet are small and inexpensive compared with American State houses, and there are few committee-rooms. However small the space may be, however, care is taken to reserve a good part of it for use as a reading-room. This is a feature of Canadian legislative arrangements which, although unobtrusive, doubtless exerts an important influence. For instance, in the Manitoba State house there is a reading-room in which one may find over eighty periodicals

from all parts of the British Empire. A member may read what is going on in South Africa, Australia, New Zealand, or elsewhere. He may learn what new developments in public business have taken place, what undertakings have been begun for the public welfare, what policies are engaging popular interest. Thus instructions in popular government are diffused, and standards of achievement are set up. There is no difficulty in bringing to bear suggestions thus acquired, for the administration can be interrogated on any subject. If any English commonwealth makes a gain in public service, the fact sets up a pressure in other commonwealths for like benefit. What an administration in an Australian State has been able to do for the people may confront a Canadian administration as a problem. As a rule the marked administrative expansion going on in the Canadian provinces, making the sphere of their governmental activity far more important than that of an American State, has not been due to the desire of the government, but to the pressure of public opinion.

With the comparatively few measures that a Canadian legislature has to consider, business can, of course, proceed in regular order. Public policy is determined not in committee-rooms, but by public discussion on the floor of the House. Inasmuch as the drafting of bills is done by experts, questions of form do not occupy the time of the House, so there is time for real debate. The ability of a member is shown not by the number of bills he is able to pass or by the amount of appropriations he is able to get, but by his eminence as a debater and his acuteness as a critic of public policy. This explains how it is that working-men may rise to such high positions in English commonwealths. The premier of an Australian State once worked at his trade on the building in which he eventually was installed as head of the government. For his seat in the legislature he had to look only to his own district; the ability he displayed as a member, and the confidence which his leadership inspired among his fellow-members, made him a member of the administration. At no time did he have to set up delegates or carry a convention. Such things make politics a rich man's game. A working-man cannot rise in American politics unless he first accumulates wealth and ceases to be a working-man.

With few exceptions the length of an American legisla-

tive session is fixed by law, varying from forty to ninety days. There is no fixed period in Canada, the matter being determined by the amount of business to be disposed of. In practice, a legislative session may be anywhere from eight weeks to three months in length. Thus the frantic scramble that marks the closing days of an American legislature does not occur in Canada. The administration may alter its programme and drop some of its scheduled measures, accepting responsibility for inaction; but no issue can be avoided that the administration decides to press. If the legislature balks, the administration may dissolve it, order a new election, and send the members home to face the issue at the polls. Thus from first to last there is responsible direction, members are in a position to examine and criticize all proceedings, and the enactments of the session express the deliberate judgment of the legislature. It frequently happens with American legislatures that the most important bills are jammed through at the close of the session with little or no opportunity for discussion or amendment. In American parliamentary procedure there has been a tendency to gag and shackle the legislature. The most extreme stage in this tendency is displayed by the rules of order of the New York Assembly. During the last ten days of the session no committee has the power to report a bill except the committee on rules, which committee may report at any time, "and such report shall stand as the determination of the House unless otherwise ordered by a vote of two-thirds of the members present." Thus the committee on rules appointed by the Speaker is master of the situation, and in practice the most important legislation of the session is reported and put to vote by this committee. Indeed, it is often the case that more bills are passed during those ten days than during all the rest of the session. When a Canadian legislature adjourns, what is done is known. When an American legislature adjourns, what has been done is not known until the Governor gets through with the bills heaped upon him and the enactments as finally certified are collected in printed form.

These differences in the organization of public authority have important consequences in every department of public life. The concrete results impress every one that crosses the border. They affect every court, every public utility, every institution of government. HENRY JONES FORD.

# HOW TO PUT THE PEOPLE BEHIND THE LAW

BY THE REV. PERCY STICKNEY GRANT

A NEW YORK judge who halted for a moment in Broadway recently to gaze up at a sky-scraper, was prodded by a policeman and told to "Move on." He moved on. His dumb obedience illustrated the attitude toward the law of the average American, who, while he may fume or grumble or prevaricate, nevertheless accepts a law pretty much as if it came from Sinai. There is a good deal of English law-abidingness inborn in the old-time American, hence his astonishment and alarm when he hears his laws challenged as fundamentally unjust.

But that is just what is happening to-day. Our laws are disparaged, even scoffed at, by large numbers of our fellow-citizens. President Samuel Gompers, Vice-President John Mitchell, and Secretary Frank Morrison, of the Federation of Labor, officers of the largest body of organized working-men in the country, are still under serious charges of contempt of court. The redoubtable Mr. Gompers is reported to offer as his solution of the matter the impeachment of Judge Wright.

The Socialist Party, in its Chicago platform, calmly recommended the dissolution of the United States Senate and of the Supreme Court.

Trade-unionists and Socialists combined flew to the defense of John J. McNamara, the secretary-treasurer of the International Association of Bridge and Structural Ironworkers, accused of complicity in an alleged dynamite explosion, greatly to the astonishment and disgust of the well-to-do classes who regarded McNamara at the moment of his arrest as virtually proven guilty of a string of dynamite outrages.

If in the large, as represented by their unions and programmes, the people flout the law, their disrespect is even more apparent when they speak for themselves. The working-man's label for our government is a "plutocracy," "an oligarchy," "a government by injunction"—one of tyranny, not of law. He laughs at law and quotes you the kidnapping of Heywood, Moyer, and Pettibone from Colorado into Idaho, and its subsequent "legalization" by the Supreme Court, which found it could not inquire into the circumstances of a kidnapping by civil officials. Or he echoes Mr. Gompers's seditious regret, "What we should have done then was to have pursued the kidnappers." Or, he refers, still laughing, to Warren's little joke, Fred Warren, the editor of the *Appeal to Reason*, a Socialistic weekly with 500,000 circulation, who, to point the moral of the Idaho "legalized kidnapping," advertised upon his envelopes a reward for the kidnapping of ex-Governor Taylor, charged with the murder of Governor Gobel, from Indiana into Kentucky, which resulted in the Socialist editor's sentence to imprisonment and in President Taft's petulant but rejected pardon.

"Disregard for law is fast becoming an American characteristic," is the finding of the National Education Association in a late report on a system of moral instruction for the public schools.

President Taft, in a speech at the Academy of Political Science, in New York, last spring, referred to the "lighter regard for law and its enforcement in America as compared with England, and a consequent less rigorous public opinion in favor of the punishment of crime."

President Hadley, of Yale, urges as a cure for our present low standards of public morality a higher reverence for law, which he thinks the country sadly lacks.

This is a new condition of things in America, especially this bitter, working-class feeling against the law—unless we compare it to the antagonism evinced by the abolitionists toward the slave-laws in the years before the Civil War. The working-people to-day in America are not behind the laws; they do not regard them as *their* laws, but as the laws of "hostile interests." It follows naturally that they distrust their law-makers and even their courts. That is the meaning of their demand for the initiative, the referendum, and the recall (even of judges). These new instru-

ments, they hope, will rescue for them their lost share of political power; will resurrect representative government and reinstate justice.

The dissatisfaction of our working-classes with the blind goddess must not be confused with the mob spirit that often sweeps away "our best citizens" when a negro is concerned, nor with the legal play of "the criminal rich." It is not the anarchist's revolt against all law, or the well-understood unpopularity of the law with criminals which the early American poet Trumbull wittily hit off:

"No man can feel the halter draw  
With good opinion of the law."

There are thousands of critics of our laws and courts who are neither masked and cowardly fiends, nor rich law-breakers, nor anathematizers of law, nor criminals; but progressive citizens possessed with a humane passion for a profounder justice. Even the dean of one of our leading law schools in a speech before a body of lawyers, including President Taft, is reported recently to have said that "the free democratic government that prevailed here was neither free, nor democratic, nor a government." His utterance is significant of the attitude of many thoughtful men. A recent incident would have been considered as an omen of dire portent in the time of the Cæsars. The scales of the Goddess of Justice on the City Hall of the Metropolis of America fell from her hands and were broken.

Working-men are convinced that both laws and courts are against them. They are astonishingly well informed, too, as any one who hears them talk can testify, about legislation and about judicial decisions that affect their class. They are not, in the commonly accepted phrase, "deceived by agitators and demagogues," nor are they stirred by "vague unrest." Their complaints are clear and specific. The laws and the courts are against them, but are for their employers.

To begin with, the working-people see that proposed legislation in their favor or for their protection is fought by wealth. Many cases are on the tip of their tongue. For instance, here in New York, Fire Commissioner Waldo's order for more fire escapes upon factories was fought in the courts by the manufacturers. The law requiring owners of tenement-houses to put running water upon every floor

of the tenement-houses was bitterly opposed as unconstitutional even by a great religious corporation. The present Tenement-house law was fought in rather a disorganized way by the vested interests, which have since organized most effectively. The efforts of organized labor to secure an eight-hour day on all public works was also bitterly opposed. The fight waged at Albany in the last session of the legislature, against the bill limiting the working-hours for women and children to fifty-four hours per week, and also against the law bringing mercantile establishments more fully under the control of the Department of Labor, are other instances. Then, again, laws beneficial to working-people are passed, but are not enforced. Illustrations from the Empire State are, perhaps, typical. The New York Labor Law requires the provisions of 250 cubic feet of air-space for every employee in a factory from 6 A.M. to 6 P.M., but there has never been any general provision for placarding the premises stating the number of employees that may be permitted to work in each room.

Referring to the enforcement of the building-laws, the Wainwright Committee on Employers and Liability says:

"It was repeatedly brought out in the testimony presented to us that those sections of the labor-law dealing with scaffolds, the covering of floors, the fencing of shafts and openings, and the protection of workmen are flagrantly violated, particularly in New York City."

The laws, it is further claimed, are interpreted by the courts in a fashion hostile to labor. The following is a partial list of important decisions by high courts.

"Refusing to haul cars a conspiracy. *T. A. & N. M. Ry. vs. Pa. Co.* 54 Fed. Rep. 730, April 3, 1893. Taft, Circuit Judge."

"Quitting work is criminal. Same, April 3, 1893. Taft, Circuit Court."

"Arbitration unconstitutional. Supreme Court of U. S., in *Adair vs. U. S.*, decided January 27, 1908, 208 U. S., 161."

"A strike is unlawful. *U. S. vs. Cassidy et al*, 67 Fed. Rep. 698, 1895."

"A workman considered 'under control.' *T. A. & N. M. Ry. vs. Pennsylvania Co. et al.*, 54 Fed. Rep. 746, March 25, 1893, Ricks, Circuit Judge."

"Effort to unionize shop unlawful. *Lowe et al vs. Lawler et al*, 208 U. S. 274, February 3, 1908."

"Unlawful to threaten a strike. *John O'Brien vs. People ex rel. Kellogg Switchboard & Supply Co.*, 216 Ill., 354, June 25, 1905."

"Unlawful to ask reasons for discharge. *Wallace vs. Georgia, Carolina & Northern Ry. Co.*, 94 Ga., 732, June 18, 1894."

"Legal to jail a man a month without trial. Oregon Supreme Court. *Longshore Printing and Publishing Co., Appt. vs. George H. Howell et al*, 26 Ore. 527."

"Constitutional to discharge a man for belonging to a union. *Wm. Adair vs. United States*, 208 U. S. 161, January 27, 1908."

"No remedy for labor except personal suit. *Massachusetts Supreme Judicial Court. Dianah Worthington et al Appts. vs. James Warring et al*, 157 Mass., 421."

Another complaint continually heard among working-men is that laws passed by the people's representatives are nullified by supreme courts, and that the courts thereby assume legislative powers. L. B. Boudin, in the *Political Science Quarterly*, for June, puts the matter clearly:

"Each case is supposed to stand 'on its own merits,' which, translated into ordinary English, simply means that each law is declared 'constitutional' or 'unconstitutional' according to the opinion the judges entertain as to its wisdom. Since there are no longer any set rules by which the judges can be guided, since they are left to determine the propriety and wisdom of laws according to the canons of politics and statesmanship, they naturally exhibit those differences of opinion which we expect to find in legislative bodies."

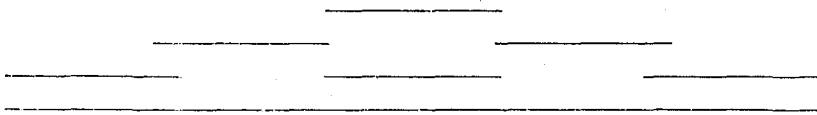
Another fact that weakens the popular confidence in the judiciary is that our highest courts rarely pronounce a unanimous decision. The "dissenting opinion" has educated the American citizen. He does not forget that he is nominally governed by majorities, but he has come to believe that on the bench the opinion of the majority need not necessarily be in accordance with justice. Nor ought justice, he thinks, in a court of nine, like our Supreme Court, to depend upon one man.

The people are confused, too, by the conflict of opinion between different courts as well as between members of the same court. Let me cite a case prolific of amused comment: In the year 1910 Basso, a bootblack, in the basement of one of the business blocks of Rochester, refused to serve Burks because the latter was a negro. The law of the State of New York requires full and equal accommodation in hotels and "other places of public accommodation." The question, therefore, was: Is a bootblack-stand a place of "public accommodation"? The first court said, "no"; the second, "yes"; the third, "no"; the fourth, "yes, but."

The immunity of wealthy criminals has helped to disillusion the man of the dinner-pail. The assistance given by the legal profession to ambitious and desperate men in securing, through our legislatures, statutes favorable to their enterprises, but deadly to public interest, has contributed to destroy the people's respect for the majesty of the law. They

discover through "investigations," let us say, that a great wrong has been done. Millions of money cannot be accounted for; vast expenditure is recorded without adequate showing in property values; what seems a gigantic robbery has been perpetrated at the expense of the public: yet, to the amazement of the simple-minded, the officials and owners of the corporations, who are well known, show no signs of fear and eventually go unpunished.

A famous district attorney explained to me how this happens. He took some matches from a match-stand on the table we were sitting at, and arranged them as you see the lines in this diagram:



He said:

"Suppose each one of these matches to be a law: suppose, then, our friend, whom everybody believes to have committed great frauds, is undertaking to carry out plans that these laws oppose. He approaches one of the laws and finds that it stands firmly in his way like a fence. If he were to lay his hand upon that law or try to jump over it, he would immediately be nabbed and prosecuted, probably successfully. But he doesn't so much as lay a finger on the law. Under the guidance of his legal adviser, he merely passes along in front of it until he finds a way around. He thereupon proceeds to find a gap between other laws, through which he just as freely progresses. Very likely he is again confronted by further obstacles, but he merely repeats the same cautious and successful practice. He does not interfere with the law, for that would render him liable, but he gets around the law. If, finally, he runs up against a law which, as far as can be seen, has no hole in it, and really bars his way, he has only to secure or to call upon powerful political backing, to pass a bill favorable to his objects, which his legal adviser draws up, and so he proceeds—*always according to law.*"

The working-people, furthermore, through their most "trusted representatives" who are labor leaders, to our shame it has to be admitted, persistently demur at the class spirit in which the law is administered. High executive officials, courts and law officers, it is contended, are swept along by this class bias, consciously or unconsciously, into grossly illegal action. A case in point is the arrest of McNamara.

In a letter addressed by Victor L. Berger (the first Socialist Member of Congress), to the Committee on Rules

of the House of Representatives, McNamara's arrest, leaving out of consideration, for the moment, his guilt or innocence, is analyzed in every particular as illegal.

"McNamara was not a fugitive from justice, and the Governor of Indiana did not take the trouble to make sure of the facts. The police judge had no proper jurisdiction, since the law specifically provides that the accused shall be brought 'before the Circuit, Supreme, or Criminal Court.' The police and private detectives who made the arrest had no legal right to do so, since the law provides that such arrests must be made by a sheriff or constable. The seizure of McNamara's private papers was illegal. The Indiana statutes (Sec. 56, act of 1905) define the right of Search and Seizure. No such act as McNamara's abduction is therein permitted. Amendment 4 of the Federal Constitution was also violated."

In a public letter dated May 10, 1911, dealing with the arrest, eight International Trade Unions with headquarters at Indianapolis ask the American public, "Can our persons be ruthlessly violated, our legal rights ignored, and our offices officially burglarized?"

The working forces of the country are sore over past encounters with their employers, in which they have been, as they believe, outrageously treated. Under the editorial caption, "No Confidence in the Courts," a member of the McNamara Defense Committee published a letter September 7, 1911, in the New York *Evening Post*. Addressing the editor, the writer says:

"Your attitude presupposes that the unions and their friends have absolute confidence in the methods of our courts. Let me tell you that such confidence does not exist. Nor would it be warranted in the light of past events.

"Let us look back upon some of the happenings of the last decade. Have you forgotten the Idaho Bull Pen? Forgotten Sherman Bell of Colorado and his exclamation: 'To hell with habeas corpus! We will give them post-mortems instead!' Forgotten all the lawless acts of the Mine Owners' Association, including the wrecking of the office of a labor paper in Victor?"

Now this shows an ugly mood, and whether or not the facts justify it, the mood itself is the worst fact of all.

In short, the working-man contends that long after the destruction of monarchical forms of government, class-control still goes on even in a democracy; that far from "the majority governing for all," Mr. Taft's artless assumption, in reality a capitalist minority governs for itself alone. This skeptical position held by the people is fortified by the recent findings of economists who discover that aristocracies or power groups have an inevitable tendency

to re-establish themselves under new names, even in republics, and that everywhere dominant classes make the laws in their own interests.

Finally, the people perceive that justice and right are not identical. If you hear no other complaint voiced by the working classes against their employers, you will hear the accusation of hypocrisy. They do not practise in business, it is charged, the altruism of their religious faith, but look out only for number one, protecting themselves behind laws, against the plain promptings of humanity. In the ranks of labor there are thousands of men of good trades and good character who, while at their work, have been injured by accidents, and whose employers have resorted to every ingenuity of the law to avoid the payment of damages.

What is more, the people do not understand justice which is only the grist of legal machinery. Merely to receive the benefit of the law is not, in their opinion, to receive justice, which might well be, to their way of thinking, something better than the conclusive decision of the court of last resort. For instance, a Vice-Chancellor in Jersey City recently refused the consideration of "common sense," urged repeatedly by a litigant, and replied, "I never knew that the Court of Equity was supposed to supply sense to litigators. All it has to supply is justice." But, somehow or other, "common sense" and "a square deal" are popular synonyms for justice, and describe the only kind the masses believe in.

The confusion of legal and moral ideals is not strange, nor purely the result of ignorance. Not only is ideal right what the unsophisticated imagine to be the aim of the law, but it is actually what philosophers have depicted as justice in a true republic, and what, historically, the law of the Greeks, more nearly than Roman or English law, strove to display.

The law of Moses, too, knew no distinction between right and justice; there was only one law. Indeed, we may have the Bible largely to thank (or shall I say to blame?) for the persistent confusion in the popular mind of the moral and the legal. Simple minds in England and America have for centuries been fed out of the English Bible upon the idea that justice should be the same thing as right. To the common people, for instance, Solomon is not only the most splen-

did of kings and wisest of men, but the most just of judges; yet how candid and convincing his judgments! Ought we to be surprised if, after generations of picturesque Bible teaching, the people seem to have got it into their heads that justice should be identical with right?

The American working-man, then, like Henry James's American Princess Maggie Verver, is disconcerted by "the discovery that it doesn't always meet all contingencies to be right." The something more, over and above being right that in his case has to be considered, is the law; but owing to his straightforward way of looking at things, it is not to be imagined that right, in his opinion, should accommodate itself to law, but that law, as a matter of course, should be fitted to right.

The relation of justice to right needs much clearing up, more than has been given it, more, of course, than I have room for here. Even jurists who have studied the fundamentals of the law are on this point obscure. One school finds the origin of the law to be custom, and consequently the judge, as "an expert upon custom," dispenses not only justice but also right; that is, as understood by his contemporaries, since he is their spokesman. The other school finds the origin of law to be the sovereign power. In their view, justice and right meet within the definition of the institutions of the day. In a monarchy governed by the theory of the divine right of kings, justice and right proceed from the imperial will, and are as infallible, theoretically, as that which proceeds from Deity. In a democracy governed by the theory of social contract, justice and right are identical for the reason that the citizen, when he receives legal justice, gets all the right coming to him under his contract; in fact, all the right his contract knows anything about.

But the educated proletariat is asking for more than that; it demands a closer compatibility between justice and right, and would be perfectly willing to go outside the breast of the judge, or the will of the sovereign, or the contract of the citizen to find it. The working-man naïvely expects law, perhaps, to stand for that which among the Athenians the Goddess Themis embodied—abstract right as well as law and order.

Perhaps we can get at the relation of legal justice to moral right by a bit more of analysis and a historical glimpse. If law deals with what "is," and morality with

what "ought to be," then we can easily look back to a time when human intelligence was so undeveloped that its customs or laws entirely satisfied it. Usage went as far as conscience saw, because a very simple custom summed up their social and psychological experience. What *was* and what *ought to be* were one of necessity because the mentality of the time could not think them apart. With increasing intellectual scope, their later schism would be inevitable.

After all, what the working-man wants is not abstract right, which would be less human than old custom and would depend upon the vicissitudes of the metaphysical theories that established its standards. The working-man is seeking a positive ground for law in racial advantage as revealed by modern science. In short, the working-man, instead of always looking backward for his legal authority, proposes to look forward, and is declaring that whatever looms as for the best interests of mankind must be right and should be law. The object of the law, as he sees it, is not only to prevent injury, but also to create all sorts of new and higher values.

And why cannot the present without arrogance claim to be self-sufficient in knowledge and conduct? The tendency to explain every advance in moral position by reference to the past has been commented upon by Sir Henry Maine as "a curiosity of human nature." Mankind has seemed ashamed to see in his own times reasons for, as well as evidence of, advance. But we have now entered upon a new era whose characteristic is that it will honor the present. Its method will be to illuminate an old science by the new sciences; it will let light into law by opening windows from law into economics, hygiene, psychology, etc., etc. "The Rule of Reason" as applied in jurisprudence must eventually, it would seem, appeal to arguments only to be discovered in the broadest prospective advantages common to mankind. Charles Ferguson says:

"That day is at hand in which it would be possible for a lawyer to stand up in court and say, 'I admit that I am not in line with the precedents; but I ask judgment on technical grounds. The law exists to mobilize the creative forces of society; and I am able to show that the case of my client is in line with the sound rules of city building.'"

Now, the object of this article is to persuade the reader that nothing can be more threatening to a democracy than

\* *The University Militant*, p. 31.

for the rank and file of the people to lack respect for their lawmakers and to harbor suspicion of their courts. Serious possibilities confront a government which permits a schism between its classes. From animadversions against the law, the step is an easy one to violation of the law; from lack of confidence in legal methods, the way is not a long one to their overthrow. The activities of our courts, on the other hand, are not so far removed from popular feeling that dissatisfaction among the masses with the attitude of the bench can be allowed to continue with no fear of consequences. Supreme Court decisions have, in the past, been momentous, as many men now living can testify. The Dred Scott decision helped to bring on the Civil War.

How can the people be put behind the law? What remedy can we apply to the increasing hostility between classes in our republic? Let us look first at simple and partial remedies.

Before proceeding, we must remember that we cannot expect the people to reverence law in the abstract; an abstraction cannot long retain the allegiance of a democracy. They will respect only beneficent laws and good lawmakers.

The people could be put behind the law to some extent by making them better acquainted with the law. This would be a method for which we have precedent in American history. The colonists knew their Blackstone. "The Men of '76" waged the Revolutionary War more upon legal technicalities than because of actual physical grievances. The orators of the Revolution could boast that every patriot was an embryo lawyer. After the outcome of the war, it was again the wide-spread knowledge of English law that made possible our Constitution.

Voices are continually heard to-day in people's assemblies and forums, often in broken English, expressing respectfully a pathetic desire to know more about the legal machinery of this country. They ask how laws are made; how state and national institutions can be changed. Lacking this knowledge, is it unnatural that ignorant or suspicious or aggrieved working-men, especially those from over-seas absolutism, still fancy themselves in the hands of tyrannical forces?

Why could not evening classes in the law be opened for working-people, where they might become widely acquainted with the subject-matter of law, and, at any rate, with their

legal rights? Besides night-schools for adults, law could also be taught in the high-schools—and, perhaps, in the last year of the grammar-school. Such law-studies in the public schools would give, too, a dignified and intelligent approach to citizenship.

The Twelve Tables were used by the Romans as a school-book for their children. If the Americans were to use the Constitution even as a “reader,” its nature, at least, could be explained to future citizens who would learn that the Constitution is not a hard and fast contract between the States and the Federal Government—in other words, a dead document—but that such an agreement embodies, of necessity, the living law of the land, and consequently contains within itself an organic principle of growth which accounts for the constructive interpretations which, to the eyes of the uninformed, look like constitutional revision at the hands of the judiciary. Every child in the United States ought to be taught that the Constitution is not at any rate a boundary-stone, but more like a guide-post, and most like a tree well rooted in fertile soil.

Popularizing the study of law would do something to correct the people’s attitude, for a knowledge of the law ought to disclose legal means out of alleged difficulties. Two prominent Socialists of my acquaintance were greatly surprised “to be shown” by a lawyer friend of mine how many of the things their party demanded could be obtained under existing laws. One of the Socialists—the more revolutionary of the two—is now studying law, and intends to practise it.

Greater knowledge of the law might correct misconception even in high places. For instance, it might prove to Senator Borah, of Idaho, that it is impossible for a judge “to consider nothing but the terms of the written law.” There is usually more than one opinion of the meaning of a statute. The first question is, what does it mean? A judge’s mind will interpret a law under the influence of his culture, temperament, and sympathies; for his mind works just as ours work. A decision with him or with us is the resultant of all the mental forces.

There is another method by which the people could be rallied behind the law; suppose bills of the first importance in Congress and in State legislatures had public hearing before great popular audiences, where the bills could be

explained by their promoter and questions might be asked and answered. Public discussion is the essence of peaceful progress in a democracy, but it is rarely afforded in legislative debate, which is too often only a demonstration of power between contending forces, with as little honest controversy as is shown in a tug-of-war contest—worse still, a tug-of-war when an anchor-man's palm has been "greased." With more public discussion we should need less public investigation. Honest public education about pending measures would have a tendency to prevent special legislation hostile to public interest, and would develop among the people sympathy for lawmakers and approval of their work—the agreeable confidence that the laws enacted were *their own laws*.

Again, why cannot laws be drafted in such clear language as to be intelligible to anybody who can read and understand English? A deal of litigation would be unnecessary and much distrust of the law avoided, if in every legislature there were an official sufficiently a master of the vernacular to frame bills whose phraseology would not itself be a source of misunderstanding. "Half the perplexities of men," says the Duke of Argyll, "are traceable to obscurity of thought hiding and breeding under obscurity of language." Even the *New York Times* is irritated at the delays and misunderstandings due to the obscurity of legal language, and lately declared, "It would be well if the slang and jargon of the law could be reduced to terms of our common speech."

We must ask our legislators—so many of whom are lawyers—and our judges as well, to know something more than the law. Laws are framed and tribunals determine justice, not only according to legal, but also according to political, social, and economic principles. The judge who believes, with our new political economists, that poverty can be abolished will hand down different legal opinions from his associate who still holds to the law of diminishing return, or that poverty is God's judgment on incapacity. Many lawyers of a humane interest in the uplift of the working-classes are unfortunately halted upon the threshold of social reform by a fear, inspired by their old college political economy and the ghost of Doctor Malthus, that our food supply is inadequate and must necessarily fall to some in starvation quantities if others are to have enough.

At a meeting of the Association for Labor Legislation, in April, 1909, Prof. Ernest Freund declared that in his opinion a systematic study of industrial hygiene would revolutionize the attitude of the courts toward labor legislation.

But hygiene is not the only study besides law which a lawyer ought to know. Biology, history, and sociology would teach him that all material things and all human institutions are plastic to evolutionary forces; that law is no exception, and that it will still further change.

If the people believe that the laws and the courts are against them, and if they demand a change, then one of the first things to be done is for the conservative classes to get used to the idea that change is not necessarily catastrophic.

Twenty-five years ago I was walking across the quadrangle of a theological seminary with the foremost educator in America. As we passed the library I made some remark about the oblivion that quickly envelops most religious literature: "Yes, the minister's library soon loses its value, but so does the doctor's. Only law stands unchanged." To-day an authoritative writer upon the law freely admits to me that the fundamental laws of property are changing. Yes, even the laws of contract—that stronghold of conservatism—are undermined.

The theological library and the law library may not be approaching a common obsolescence, but those concerned with law must acknowledge that unexpected changes in their science are under way. But change does not spell revolution—that is, destructive revolution. Changes take place in political and religious institutions long before they are named. A name does not make a change dangerous. Lowell was a good constitutional lawyer when he wrote:

"We shape our courses by new risen stars,  
And still lip-loyal to what once was truth  
Smuggle new meanings under ancient names,  
Unconscious perverts of the Jesuit, Time.  
*Change is the mask that all continuance wears*  
To keep us youngsters harmlessly amused."

Out of the midst of the Supreme Court itself comes testimony to the change our laws are undergoing. Justice Holmes encouragingly remarks

"that it is unavoidable that judges base their judgments upon broad con-

siderations of policy, to which the traditions of the bench would hardly have tolerated a reference fifty years ago.”\*

Mr. George Gordon Battle, after a valuable review of notable decisions affecting labor, concludes that recent decisions are, on the whole, more sympathetic, and are more disposed to take into consideration public policy.†

Let us now turn to the more serious and fundamental method of putting the people behind the law, and of closing the growing chasm between classes in our democracy.

We cannot put the people behind the law merely by taking power away from the capitalistic class and by giving it to the working class. Our problem would not be solved by transferring political power from the capitalistic minority to the proletariat majority. Working-class control would only swing the pendulum to the other extreme and give us working-class justice, just as now we have a capitalistic justice. And we are well enough aware that one control, if we are talking about arbitrary exercise of class power, would be as bad as another. A working-class control would be as unjust as a capitalistic control, for it, too, would be one-sided.

The working-class outlook, on the whole, it has unfortunately to be noted, is not broad, and some of the decisions adverse to labor we are obliged to account for (and this is admitted by labor men themselves) as the result of immature legislation undertaken at the hasty and querulous call of labor. Some working-men blame their own class for the adverse judicial decisions, and even contend that most of the labor laws declared unconstitutional have been declared so justly. The trouble with the laws, they say, is not so much with the courts as with labor itself, or its legal representatives; for the trouble is in the instincts of the working class. The instincts of the working class are to procure some sort of legislation that will protect them, and that will injure, somehow or other, the corporations, by giving small businesses advantage over corporations. Much of the legislation in the interest of labor has, as can be seen, discriminated against corporations and also in favor of local labor as against race and nationality. Not only was it easier for the courts, but incumbent upon them, to declare such legislation unconstitutional. The fault may lie in the

\* *The Common Law*, p. 78.

† *Address before the People's Forum*, p. 16.

wrong instincts of the working class, or in the attempt on the part of legislators to satisfy labor by passing some sort of legislation in its favor, but of such a nature as to make the declaration of its illegality certain.

If capitalistic control of legislation is intolerable, and if working-class control would be no better, must we not look for a mean between capitalistic control and working-class control; that is to say, for a relation between the two that will give to neither undue power?

In other words, we are confronted by the problems of a heterogeneous population, diverse in tradition, in education, and in economic condition. The great question is: How can we fuse together the diverse and warring elements of our population? For "a nation may be intact," says Homer Lea, "only so long as the ruling element remains homogeneous."\* By the very terms of a democracy, however, where the ruling class is all the people, its citizenship is pledged to an ideal homogeneity. If, therefore, we would save our national existence, every effort must be made to promote such an understanding and interchange, such a just distribution of wealth and honors as shall truly recreate, out of our conflicting classes in the United States, a homogeneous people. This is a titanic task both materially and morally, but it is the task before the United States if it is to maintain its existence as a self-governing nation.

How can we create a homogeneous nation? is the vital question for America. How can we secure a mean between capitalistic control and working-class control? Can this be done in any other way than by raising the material status of the working classes and by reducing the private and arbitrary control of wealth?

The United States can only be given necessary homogeneity by reducing the disparities between rich and poor. "No nation," says Professor Patten, "can have a normal growth with poverty-stricken neighbors trying to displace it."† How much less can a self-governing nation have a normal growth while poverty-stricken classes are attacking it from within.

A constant taunt heard upon the tongues of Socialist orators is that capital never gave anything willingly to labor; that concessions have been fought for and wrenched

\* *The Valor of Ignorance*, p. 124.

† *The Social Basis of Religion*, p. 186.

by fear or by force. The story of specific legislation seems in detail to bear out this allegation. But, viewed in a large way, there is a mitigating answer. The loss of class assurance was, just before the French Revolution, an increasing appearance in the aristocracy. If the growing doubt of itself had had great leadership, modern history might have had a painless birth, and progress in the nineteenth century no reaction. It is a question whether power can be snatched from classes which have monopolized it until they have become unnerved by self-distrust. A weakening of self-confidence may be observed to-day in the capitalistic attitude in America, and, at the same time, an increasing sympathy for labor among the intellectuals. Here, then, we have a mental and moral medium in which alone class concession may be secured and fixed. This is the field, too, in which wider education, mutual confidence and sympathy ought to be most helpful in adjusting popular grievances.

Sir Henry Maine noted the conflict between law and progress. "Law," he said, "is stable; the societies we are speaking of are progressive. The greater or less happiness of a people depends on the degree of promptitude with which the gulf is narrowed."

PERCY STICKNEY GRANT.

# NECESSARY PANAMA CANAL LEGISLATION

BY EMORY R. JOHNSON

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THE greatest engineering work of the ages is within two years of completion. It is confidently expected that the Panama Canal will open its gates to merchant ships during the year 1914; for by that time the waterway, though lacking minor details, will be far enough advanced to allow even the largest vessels to pass with comparative safety from ocean to ocean. The year 1914 will be employed in the final work of construction, in training the operating force, and in tuning up the complicated machinery until power-plants, lock-gates, valves, and motors shall respond with precision to the touch of button and the turn of lever; then on New Year's Day, 1915, the Canal will be formally opened with appropriate ceremony. War vessels from the fleets of all nations will unite with the dreadnoughts of the American Navy in an imposing progress from the Caribbean to the Pacific. Thus will be celebrated the triumph of a third of a century of endeavor, the realization of the hope of Columbus, of Balboa, and of De Lesseps.

The problems of canal construction have been revealed and solved—disease has been held in check, the Gatun Dam has been established upon a broad and sure foundation, the massive locks will be completed during 1912, and their operating machinery will be installed before the close of 1913. Even the sliding banks of the Culebra Cut, which during 1909 and 1910 caused no little anxiety, are approaching the angle of repose. The days of uncertainty are past; it is now possible and necessary to plan for the future. What shall be the future of the Canal Zone? How shall the Canal be operated? What tolls shall be charged for its use? These

are pressing questions to be answered by Congress and the country as soon as a wise decision can be reached.

From the American occupation of the Canal Zone in 1904 until the present time, the Zone has been governed by the President of the United States, whose executive orders are the law of the land. The President has acted without a grant of authority by Congress, there being no disposition on the part of Congress to place any restrictions whatever upon the President other than those imposed upon him by the Spooner Act of 1902, which instructed the President to construct the Canal through the agency of a commission of seven men. The time has now come when Congress should act; it should give legislative sanction to the executive orders issued during the past seven years, and should definitely authorize the President to govern the Zone in the future.

Different views are held concerning the policy to be adopted for the future government of the Canal Zone and for the operation of the Canal. There are those who, animated by a zeal for the spread of democratic institutions, would seek to make the Zone a model republic—an ideal to inspire all Latin America. Those who are of this mind would maximize the civil government of the Zone, place a civilian governor at its head, and make the superintendent, or director, of the Canal a subordinate in charge of one department of the civil administration. Others, equally patriotic, would have Congress authorize the President of the United States to establish military rule upon the Isthmus by placing a major-general in charge of the fortifications and making him the director of the Canal. Those who would emphasize the civil authority would dissociate the civil and military functions of government, and would welcome the settlement of the Canal Zone, preferably by a permanent population of American homesteaders; while those who advocate the military administration of the Canal contend that the Zone cannot be profitably cultivated, and that, if successful farming were possible, the portions of the Zone not occupied by the Canal and its appurtenances should be kept as a government reservation to be used as future needs may require for the enlargement of the Canal and for the purposes of the Army and Navy.

The issue, thus stated, seems to be clear cut. Shall the Zone be a military reservation, and shall the Canal and the

Zone be subject to the Commander of the Forts, or shall the three hundred and forty square miles (more or less) of land within the Canal Zone not immediately required by the Canal and its auxiliary works and structures be made, if possible, the seat of a model democracy whose civil governor, selected by the President of the United States, shall be responsible for the operation of the Canal? However, at this, as at most cross-roads of public policies, there are more than two ways from which to select a course of procedure—and in this instance, as is usually the case, the road to take is one intermediate between the two extremes.

The area of the Canal Zone is less than most people suppose it to be. The entire area within the strip ten miles wide across the Isthmus is 436 square miles, and of this the United States, either directly or through the Panama Railroad Company, owns 363 square miles, the remaining 73 miles being private property. The Canal occupies 96 square miles, leaving but 267 miles of unappropriated government land. The future enlargements of the Canal and the construction of additional auxiliary works from time to time will require a part of this government land. A portion of the reservation will be required for military and naval purposes, present and future; and it is conceivable that a government reservation on the Isthmus of Panama might be of advantage to several departments of the government.

It will undoubtedly prove to be the wiser policy for the United States to reserve all the land it now owns within the Canal Zone for canal and other government purposes. The United States should also gradually acquire all privately owned land within the Zone. It would be a serious mistake, from every point of view, sanitary, economic, and military, to allow the narrow strip of land on each side of the Canal to be occupied by the shiftless shack-dwellers that have already begun to establish themselves on the margins of the jungle; and, however desirable a Zone population of American planters might be, it is not to be expected.

Those who anticipate the occupation of the Canal Zone by farmers from the United States seem not to have considered the economic limitations of the Zone, which consists, for the most part, of land too swampy to be drained, or too rough and irregular in configuration to be laid out in plantations that could be successfully cultivated. The climate of the country, as well as the contour of the land, is a

hindrance to agriculture. A rainy season of eight months and a dry season of but four months make the Zone a region of rank vegetation and of meager crops. The growing season is too long and the fruiting season too short.

A glance at the map of the Isthmus will partly explain why the Zone is not a favorable location for plantations. Where the Canal crosses the Isthmus, the distance from ocean to ocean is not only short, but the continental divide swings over close to the Pacific side, leaving no plateau between the mountains and the sea. In all Central American countries, it is upon the plateaus between the divide and the Pacific that the coffee and the sugar plantations and most of the ranches are located. There the annual rainfall is not excessive, and the dry season is of adequate length. Bananas are grown in large plantations near the Caribbean, and rubber-trees thrive on both sides of Central America, but most agricultural products, even cacao, are raised to better advantage on the uplands that slope toward the Pacific. Moreover, the climate is more salubrious than on the Caribbean side of the divide. For these reasons most of the population of Central America is near the Pacific.

The possibilities of banana culture on the Atlantic slope of the Canal Zone are extremely limited; and there is little, if any, land on the Pacific side adapted to coffee, sugar, or cacao culture. There is no prospect that capital will be invested in plantations within the Canal Zone. In other portions of the State of Panama, and in Central America generally, so much greater opportunities and so much more favorable economic and climatic conditions can always be found that capital will not favor the Canal Zone.

The policy of opening the Canal Zone to American settlers and the exclusion of Panamanians would doubtless be objectionable to Panama. The Zone lies across the center of the territory of the Republic of Panama. The Isthmian Canal Commission, in order to avoid friction with the Panamanian Government, adopted for the Canal Zone the Panamanian laws, which impose the numerous personal taxes and fees customary in Spanish countries. American settlers in the Zone would not submit to the Spanish system of taxation. There would have to be different tax laws within the Zone than there were across its boundaries, no matter how difficult it might be for Panama to enforce her laws in the neighborhood of the Zone. It may be argued that Panama ought to

change her laws; and probably she ought; but there is no prospect that Panama or any other country with Spanish institutions will adopt Anglo-Saxon theories of taxation.

To reserve the Canal Zone for government purposes will best serve the needs of the United States, and will minimize friction between the Zone authorities and the Panamanian Government.

Whether the United States shall decide to open the Zone to settlement, or whether it shall reserve the territory strictly for Government purposes, it will be necessary for Congress to provide for the administration of justice through appropriate courts. The judicial power should be exercised by judges entirely independent of the military and civil authorities.

It is to be hoped that Congress will vest in the President the military, civil, and judicial powers of the United States in the Canal Zone, leaving to him the organization of the machinery of government. The President should be authorized to establish one Circuit Court for the Zone and such inferior courts as may be found necessary. Like Federal judges, the justice of the Circuit Court of the Zone should be appointed by the President by and with the advice and consent of the Senate; but he should hold office for a limited term of about four years, in order that the President may be able, without embarrassment, to maintain at the head of the judicial system of the Zone a man of proven capacity.

At the present time there is a Supreme Court on the Canal Zone, consisting of the three Circuit Judges. This court has undoubtedly served a useful purpose during the period of construction when there was a large force of employees living in the Zone, but such a court will hardly be needed after the Canal has been put in operation.

Appeals from the Circuit Court of the Canal Zone had probably better be made to the Circuit Court of Appeals of the Fifth Circuit of the United States, which sits in New Orleans, and which is familiar with the principles of the Spanish law. The Circuit Court of the Canal Zone should have final jurisdiction in most matters, appeals being allowed, however, in actions and proceedings involving the "constitution, or any statute, treaty, title, right, or privilege of the United States." It might also be well to allow appeals in cases in which the property in controversy ex-

ceeds one thousand dollars in value. Cases involving criminal offenses punishable as felonies should be appealable to the Circuit Court sitting in New Orleans.

When the United States is at peace with foreign nations—and peace is our normal condition—the authority over the Canal Zone outside of the fortifications should center in the superintendent, or director, of the Canal and its auxiliary works—the railroad, the piers, dry-docks, machine and vessel repair-shops, coaling-stations, and other necessary and pertinent establishments. The chief concern of the United States upon the Isthmus is the operation and maintenance of the Canal; and in selecting the superintendent and defining his authority neither politics nor official red-tape should interfere with efficiency. Men admirably equipped with the technical knowledge and the administrative experience required to manage the Canal can be found in the Engineer Corps of the United States Army. The success attained by the Army Engineers in constructing the Canal makes this certain.

There are other strong reasons for selecting an engineer officer, instead of a civilian, to operate the Canal. The President, quite untrammelled by political influence, can detail an officer of the Engineer Corps for this duty, and such an officer will be a man whose training has developed both his initiative faculty and his sense of discipline. He is an officer who obeys commands and who compels obedience. His status as a United States engineer officer, holding a position with a life tenure, enables him to act independently of all influence except a zeal for public service. Politics should have nothing to do with the operation of the Canal, and the surest way to safeguard the Canal administration against political influences is to authorize the President to act through a detailed engineer officer.

The general organization for the operation of the Canal and the administration of the Zone might well be as follows:

Subject to the Colonel of Engineers, who is detailed by the President as Superintendent, or Director, of the Canal, there would be:

1. The Department of Canal Operation, within which there would be the foreman of locks, the power-plants, the terminals, and sub-foremen of dry-docks, machine-shops, and other works. A bureau of canal tolls and measurement of vessels would be a part of the department.
2. The Department of Railroad Operation, organized as is customary in the railroad service.

3. The Department of Sanitation and Quarantine in charge of an officer detailed by the President from the Public Health service.

4. The Department of Zone Administration, at the head of which would be the superintendent of the reservation. The work of civil administration in the Zone would be reduced to a minimum by the exclusion of settlers and by using the reservation only for government purposes.

This form of organization would provide a simple, unified, and economical administration during times of peace. When the United States became involved in a war, martial law would, naturally, be declared in the Canal Zone, and the Commander of the Fortifications would be given authority over the Canal until the restoration of peace.

Congress should pass a law early in the coming session, giving the President authority to operate the Canal so that he may retain the best men now on the Isthmus for the operating force, which will comprise from 2,000 to 3,000 men. The President will, naturally, act through the Chairman of the Isthmian Canal Commission, who should be directed to work out the operating organization during 1912, to establish a scale of wages to be paid the permanent force, to engage the men who are to be employed, and to begin as early in 1913 as is practicable to train these men for the duties they will have to perform when the Canal is opened for the passage of shipping, which will be on or before the beginning of 1914.

It is the belief of Colonel Goethals "that a lower wage scale can be put into effect for operating the Canal" than has prevailed for construction work, provided Congress will allow sufficient time for building up the permanent operating organization. Prompt legislation by Congress is desirable in order that the President may act without undue haste, and that the present Chairman of the Isthmian Canal Commission may be able to organize an operating force from among the employees now on the Isthmus.

The Canal is being constructed to serve the commerce of the United States and of the world. It will be of great naval importance to the United States, but its purpose is primarily commercial. The accomplishment of this purpose will, in large measure, depend upon the tolls charged for the use of the waterway. If the tolls are placed so high as to cause a large volume of traffic to keep to the route through the Straits of Magellan or to choose the Suez, instead of the Panama, route, the tonnage and commercial

usefulness of the Panama Canal will be unwisely limited; and, if the tolls are made lower than those that may be imposed without unduly restricting the use of the American waterway, the United States will fail to secure the revenue justified by the large expenditure of public funds that has been made for the construction of the Canal, and must be made year by year for its operation and maintenance. Panama Canal tolls should be fixed with reference to both their commercial and their fiscal results.

The time has come to decide what the tolls shall be. Indeed, it is now a year since such steamship companies as the American-Hawaiian Line, the Pacific Mail, the Royal Mail, and the Hamburg-American, and such large manufacturers as the Carnegie Steel Company, began to ask the Government what the tolls are to be at Panama. In order that steamship companies may be ready to expand their services upon the opening of the Canal, new ships must be ordered and adequate terminal facilities must be constructed or secured. Such large shippers and manufacturers as may desire to operate vessels of their own through the Canal, either in marketing their goods or securing supplies, must also have ships and terminals constructed; and it ordinarily requires about two years to design, contract for, construct, and put into service a well-appointed vessel. Business prudence will, of course, cause steamship companies and manufacturers to postpone the investment of capital in ships to use the Canal until they know what the tolls are to be.

It is desirable that carriers and shippers should be given ample time to prepare to use the Canal as promptly as possible upon its completion, in order that industry and trade may, without unnecessary delay, secure the benefits of cheaper transportation. The shifting of traffic from existing routes to those through the Canal will, in any event, require some time; distance alone does not determine the course taken by ocean vessels; various commercial factors have their influence; and many ocean-carriers will determine experimentally whether, or to what extent, it is profitable for them to use the Canal. On the other hand, many vessel-owners will, as soon as they know what tolls are to be charged, be able to decide whether to abandon existing routes upon the opening of the Canal. The use of the Canal during the first two years of its operation, and consequently

the service it renders commerce, and the revenues it yields the government, will be increased by an early announcement of the rate of tolls to be charged.

Bills that have been before Congress during the past year have wisely provided that the President shall fix the tolls and change them from time to time. These bills name the maximum and minimum points between which the rate of tolls shall be fixed; but the proposed legislation recognizes the fact that the adjustment of tolls to traffic is an administrative problem, and that the President should be allowed wide discretion in fixing the charges. Undoubtedly, Congress will, this winter, include in its Canal legislation a grant of authority to the President to decide what the tolls shall be, and to make such changes in them, from time to time, as may be justified by the volume of traffic and the amount of revenue obtained from the Canal.

EMORY R. JOHNSON.

# ONE PHASE OF JOURNALISM

BY JOSEPH S. AUERBACH

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THE assertion so frequently made that we have a too sensational press is, in a measure, doubtless correct; yet so long as we continue to have sensations to record, it is perhaps idle to expect, and it may be unwise for us to desire, any marked change in the character of news published. And though all of us when abroad enjoy the great London dailies, with their attractive appearance and admirable presentation of matters of general interest to the whole English-speaking world, we may not always consider why it is that the columns of a London and a New York newspaper of equal prominence so often exhibit such striking if not startling contrasts.

If quite frank with ourselves, however, we must recognize that there is much less occasion there than here for the publication of sensational news; for, embarrassing as may be the admission, it is nevertheless true that we have not, to the same extent as have the English, an underlying regard for law and order in relation to what we are pleased to term petty offenses with which the sensational item so frequently deals; and we do not, therefore, as is done in England, see to it that they are disposed of as matters of primary importance.

An incident at an important conference recently held at the country home of a distinguished Englishman many miles from London may serve as an extreme illustration of this distinction. A member of the nobility, and also well known "in the City," who was among those taking part in the conference made it quite clear to all present, except an American, that his absence from one of the discussions was imperative because he was to appear to press a complaint at Scotland Yard against a cab-driver who had overcharged him. What in such a case is the rule in England would be the exception in this country.

By this it is not intended to suggest that vast problems are not being solved by us for the advancement of the world, for the contrary is true; and one must be indeed blind who does not see that this country, in humanitarian acts—which elsewhere seem meager and grudging by comparison—and in high purpose and achievement, is justifying the hope of mankind in the experiment of a democracy. But, as we move forward to our great accomplishment, we in a sense disregard and frequently do not even unfavorably comment upon these many minor transgressions, apparently content that for the time being they should be merely elbowed out of the way by the larger and more urgent affair of our life. Nevertheless, we shall be unwise if we close our eyes to the possible consequences of permitting even them to go too long uncorrected, lest by and by they may grow into precedents for much wrong-doing. For the accepted rule in ethics is fully indorsed by observation, that punishment in the court of conscience, unlike that in courts of law, lessens with each repeated and unrebuked offense; and it should be a grave concern with us that we do not deaden our sensibilities to that which makes for a more enlightened and exacting citizenship.

That we shall in the end deal summarily with petty as well as with grave offenses, and make graft and greed synonymous in the public estimation with criminal acts, all who read aright our history are entitled to expect; and meanwhile until these reforms are brought about, there should be no precipitate conclusion that the Press is too censurable for its vigorous methods of presenting some rather seamy sides of our progress. We can often be more profitably employed in considering whether, in the mirror thus held up, there may not be presented a more or less accurate, though it be a discouraging, reflection of men and things as they are with us to-day.

It is not meant, however, to applaud the unnecessarily conspicuous display often given to unwholesome news and to the theatric comings and goings of many persons, whose whereabouts and performances, one would think, were of little or no moment in the world. Such a practice does more than make a newspaper page uninviting, for it may even give rise to much misconception concerning a community which tolerates it. That the city of New York is, in the opinion of many another section of this country, a hot-bed of

things of at least frivolous growth instead of standing for what it really is, a splendid monument to the character and culture and noble deeds of the great body of its citizens, is due, more than to anything else, to the inference capable of being drawn from many newspaper accounts that the casual, contemptible outcropping of misconduct is largely typical of the ways of life here; and, if the reader be too inert or perhaps indisposed to draw this inference, the editor often gladly volunteers to do it for him. But of all this the present article presents no extended discussion.

There is, however, another phase of journalism that must be deeply regretted by all thoughtful persons, and this is the harsh and undeserved criticism to which men of character and distinction are often subjected in the news item as well as in the editorial column. And, whether the injustice be deliberate or merely the result of a kind of flippancy or indifference, injury is done to the individual by subjecting him to humiliation, and to the community by destroying or at least chilling his ardor for further effort. Moreover, such a course, if persisted in, cannot fail to lessen the influence of the Press in an emergency calling for legitimate reproof or denunciation. There are times when one is inclined to the exaggeration of saying that scarcely any one prominent in public or private life seems safe from this kind of reproach. Even a President of the United States encounters it; a member of Congress, with much to his credit as a legislator, if he be, so to speak, too aggressively progressive, may find himself classed among demagogues; and the upright man of affairs, who does not hesitate to give liberally of his time and resources for the public welfare, may, on slight provocation, come to be *persona non grata* to the newspaper.

Even those representative newspapers of this city, which exhibit in their editorial columns a vigor and charm of style the very reverse of the slovenly writing appearing in many a magazine article and not a few books of the day, and which maintain an attitude toward better civic conditions, in refreshing contrast with what we at times are called upon to witness elsewhere, are now and then guilty of the rough rebuke of men deserving at most only temperate criticism; or if it be not rough rebuke, it is an inconsiderate ridicule quite as damaging, if not more so. It is not easy even if it be possible to account for this tendency, but the habit

acquired in the rather lurid presentation of the sensations of the day has undoubtedly a good deal to do with it. Still, the newspaper proprietor is a merchant, giving to the people what they demand or are willing to put up with; and if he forgets this, his memory is promptly jogged from the counting-room or the circulation department. So it may well be that we as readers have our distinct share of responsibility in the matter, for having indulged ourselves so long on the highly seasoned mental food provided by the newspaper—together with a goodly admixture of the cleverly told salacious story and the questionable but well-presented play—perhaps we are no longer satisfied with simple, old-fashioned nourishment. If the *tu quoque* retort be made that many of us in private conversation are prone to express unamiable and unfair judgments about our fellow-men, we may, while conceding the point to be well taken, at least reply that the harm thus done within a limited circle is relatively negligible, compared with what results when the editor of a great metropolitan journal errs in his appeal to the vast audience which he addresses and so unmistakably influences. With the momentous privilege of his high calling he has correspondingly momentous obligations; and a frame inclosing a card on which *Noblesse oblige* was conspicuously printed would not be an inappropriate addition to the rules and regulations of more than one editorial sanctum; and it could, properly enough, be a substitute for a list of the excommunicated, if the wall space be already fully occupied.

If it be not feasible to have the list dispensed with altogether, at least there is every prospect of some erasures from it if the editor can be induced to have a referendum of the question (which would be much more defensible than the political referendum some of us are shouting so loudly for just now) to the books of literature that can give us chart and compass and the sure and steady light whereby we may find the true course for just criticism. They are not, however, books written by authors who have merely looked out upon the world from the college window, but by those who have lived in close and sympathetic touch with the world, and have thus come to have a kindly and yet practical understanding of the "rule of reason" which should govern us in our judgments and conduct, quite as much as it does in the interpretation of statutes. There is no need

of quoting from such authors or even to call the long roll of their illustrious names. The reassuring voice of Horace still speaks for them all during these days of illogical extremes, in that inimitable Satire which pleads for discrimination in censure, with many a delightful variation of the theme:

“ Adsit,  
Regula, peccatis quæ pœnas irroget æquas  
Ne scutica dignum horribili sectere flagello.”

In the event that this suggestion of a search for the judicial frame of mind be rejected by the editor, it might, after a fashion, serve the purpose if, before starting with the ominous scratch of his pen, he should consent to surrender himself to the spirit of such rollicking but subtle lines as those of Gilbert in “The Mikado,” outlining some methods by which punishment may be made to fit the crime. Or, if neither alternative be acceptable, certainly recourse to the homely injunction of Jefferson—when angry, count ten; if very angry, a hundred—should be of some avail in allaying any exuberant editorial wrath.

Sometimes this very pronounced displeasure of the newspaper seems to be merely a form of survival of the obsolete stump oratory, which was usually regarded as a failure when the adversary was not well pommeled; and at other times it has only the justification that the person criticized may have been guilty of a venial mistake or shortcoming. The Autocrat of the Editorial Council high up above the earth is apparently unwilling on occasions to admit, as we who toil in the streets are not infrequently called upon to do, that the man of distinction in public and private life, as well as the man of business, has a balance-sheet with its debits as well as credits. When the balance is struck, condemnation should not follow merely because entries are found on the debit side, but the test should be whether the balance is on the wrong or on the right side. If on the right side, the man is honored, and if on the wrong side, he is classed with the unworthy; and it may also be added that much of existence becomes intolerable unless we are sufficiently rational to recognize that there is the saving grace of time and conduct, whereby we may interpret not only the former deeds of men, but their motives, which are so often elusive.

The impressive chapter and verse are not wanting with which to fortify the foregoing statements.

We have just passed through a very acrimonious controversy over the election of a United States Senator from New York. Without entering into any discussion as to the relative fitness of the two candidates, Mr. Sheehan and Mr. Shepard, it is quite safe to say that the incident presented a painful object-lesson of the newspaper criticism referred to. Each candidate was respected by his acquaintances, and any question as to the personal character of either ought in large measure to have been set at rest by the number and the character of the friendships he was permitted to enjoy, and the general regard in which he was held by the community. It was the good fortune of Mr. Shepard not only to escape criticism, but to be eulogized, though, as we shall be reminded in a moment, he had a wholly different experience a few years before. The respective qualifications of the two men were fairly presented by some of our newspapers; but, in others, the reiterated insistence upon the unfitness of Mr. Sheehan for the office to which he was legitimately seeking election came as a shock to his many friends, and to all who knew him. There seemed to be little or no limit to the hard usage to which he was subjected, though after the noise and excitement of the controversy subsided few could be found who were not of the opinion that it was unjust and indefensible. Naturally enough this was so, for "the very head and front of his offending" was that, in his early political career, he had, perhaps, been overzealous, not in his personal interest be it remembered, but in the service of his party, for which his attachment has always been an unselfish, passionate, untiring devotion, going so far on more than one occasion—even against the remonstrance of his intimate associates—as to make inroads upon his strength and health.

We have a more forcible illustration of the tendency referred to in Mr. Shepard's candidacy for the Mayoralty of the city of New York in 1901, which incurred the even greater hostility of the Press; for the newspapers themselves, in this instance, if not in so many words, yet by a complete change of front, have made acknowledgment of their error. There can be little or no serious claim that the treatment of Mr. Shepard was justified, since the same newspapers said one thing of him then and quite another when he was a candidate for the Senatorship and at the time of

his death, though admittedly he was in point of character and reputation in 1901 what he was in 1911. He had not meanwhile done anything, and had not been required to do anything, to bring about this reversal of opinion.

Nor was the tribute which the newspapers have just paid to his intellectual attainments and worth as a citizen traceable to any extravagance of statement or to the charity which, in our judgment of men, we so generously display at their death, for it was the counterpart of the eulogies printed during the Senatorial contest, and was as merited as it was spontaneous. Nevertheless, in this discriminating estimate of his life, there is but slight if any disapproval of his course in 1901, though then, by reason of it, he was not only charged, among other offenses, with unpardonable inconsistency and with equivocation and even insincerity, but was characterized as one quite willing to barter repute and principle for political office. The language of vituperation appeared at times to be almost exhausted as the lash was applied, and it seems incredible that the words quoted below, when read in conjunction with the newspaper columns during the past few months, were ever published; and it all came about because the acceptance of the nomination and his method of discussion of the issues were frowned upon. As a consequence Mr. Low, his opponent, was elected, and Mr. Shepard came out of the campaign overwhelmed by denunciation and discredited by defeat.

That the question was fairly debatable whether it was judicious for Mr. Shepard to accept a nomination from Tammany Hall, which only a few years before he had bitterly denounced as a "foul blot" upon our municipal history and government, and that he may have attempted to deal in a too tactful way with some of the issues of that campaign, we may, at least for the sake of argument, be prepared to concede. All that is now urged is that his course, if it was a mistake, called for criticism, not abuse. Undoubtedly he had meanwhile experienced no change of heart as to that organization. With all his professional honors he clearly was not so intent on being Mayor of the city of New York as to be willing to forfeit his self-respect for the greed of public office; and no right-minded person can permit himself for a moment to believe that his administration, if he had been elected, would not have conformed to his superior standards of principle and conduct. Mr. Tilden

was the scourge of Tammany Hall, but he did not spurn its aid in securing a nomination or an election to a high office, nor did he as a candidate devote his time to a discussion of its shortcomings. The same is true of Mr. Cleveland and of other distinguished men whom we all have in mind. Mr. Shepard was willing to pass over in silence some of the issues of the campaign, believing, undoubtedly, that his election would place him in a position where he could, once and for all, put an end to those party abuses which must have been quite as apparent and repugnant to him as to any newspaper critic. It may well be that this was the controlling consideration which induced him to be a candidate. The editor knows, as do the rest of us in the world, that the man of distinguished ability and strong character is often in a position where he is unable, in season and out of season, to express his convictions from the house-tops without running the risk that, at times, his utterances may be ill advised. This does not presuppose hypocrisy; on the contrary, it presupposes every-day prudence and is to be commended.

Let us, nevertheless, for a moment consent to go so far as to be in accord with the implacable, Rhadamantine judges—and there are more than three of them in this world—who insist that Mr. Shepard, under the then existing conditions, did commit a mistake in seeking or receiving a nomination from Tammany Hall. Let us go still further, and journey all the way from modern-day New York to Utopia, and while temporarily there agree with Plato, that a city will be best administered by men with such appreciation of the responsibilities of governments as to be averse to accepting office. Life, however, is not wholly made up of uncompromising, uncharitable conclusions or of philosophers' abstractions, and the time will surely come when the saving common sense, of which Tennyson speaks, will persuade us to leave these judges to the enjoyment of their judgments, and to make the journey back from Utopia—for we cannot always live there—to this earth, which, despite the poet, does bear a balsam for mistakes. Nor can we better commemorate our home-coming with readjusted perception, than by reading in the company of the humane and genial spirit of Horace, out of the Satire quoted from, the further comforting and sane suggestion that reason should establish one guilt for the trespasser who, in another's garden, breaks

a cabbage stalk, and quite a different sort for him who, in the night, makes off with the sacred vessels of the gods.

It is not possible, in the space of a magazine article, to refer to all the editorials published in October and November, 1901, tending to establish the injustice to Mr. Shepard; but, almost at random, selections are made from four of the representative newspapers of this city, together with their recent expressions concerning the fine example of his life. Even those newspapers which it may, perhaps, with some reason, be claimed did not go beyond the province of legitimate criticism, nevertheless used words in which there was a good deal of the crack and cut of the lash; but ingenuity would soon exhaust itself in any attempt to justify the following editorials.

One newspaper, under the heading "The Unartful Dodger," printed the following:

"What a clumsy dodger the man is, and how utterly destitute of shame."

Again it stated:

"... What a shameless Shepard he is! Just how shameless was not revealed till Mr. Philbin spoke for the first time in this campaign and showed us what he had been fighting, and what he had had to contend with.

"And what, pray, are you, Mr. Shepard? Are you an honor to us in the eyes of the civilized world? What are you drawing your 'flaming sword' in defense of? What are you dodging and trimming and falsifying and sneering in the hope of accomplishing? You know. You cannot deceive yourself, no matter how much you may deceive others."

In the same newspaper there was an editorial attempted to be so worded as to justify its title, "A Political Rake's Progress."

On still another occasion it said:

"Shepard might have succeeded better in his rôle of screen for Crokerism had not Justice Jerome appeared in the field. That made the contrast between a man who was 'not afraid' and a man who was, between a fearless man and a dodger, so clear that all men saw it. The braver and franker Jerome has been, the more despicable have Shepard's daily wriggling and dodging and hair-splitting appeared. It is no new revelation that the American people like courage in a public man. Neither is it a new revelation that all mankind detests a sneak. . . ."

The following quotation from the same source has a bearing upon the subject-matter of this article, not alone for its treatment of Mr. Shepard, but for its reference to Mr. Dayton, who, at that time, was a lawyer of position in the community, and who later became a worthy judge:

"... Every man who respects manliness and honor in his fellow-men rejoices to-day over the defeat of Charles W. Dayton for this Bench. Next to Shepard he is the most odious figure in the campaign. ... Like Shepard, he sold himself for a price, and the price is found to be worse than worthless. ..."

At the time of Mr. Shepard's death the newspaper had this to say:

"New York has lost a good citizen by the untimely death of Edward M. Shepard at the comparatively early age of sixty-one, and the local democracy is minus a member it could ill afford to spare. Mr. Shepard was one of the few Democrats left in this region whose opinions received, and deserved, respectful attention, irrespective of party or politics. His political career was governed by personal convictions rather than blind party fealty. He was of too high a type to be popular with the local party leaders. If fate had cast his part on some other and less frankly commercial Democratic stage he would probably have attained high political distinction."

Another newspaper asserted:

"Low speeches in this campaign are straight and strong. Shepard speeches are sly and slinking."

A further editorial is entitled, "A Shifty Shepard."

Still another editorial in the same newspaper, "The Shepard of Shalott," has this:

"... Was ever man so fated to trip himself on his own moral standards and condemn himself out of his own mouth? ... Since he grew 'half sick of shadows' in political exile, and looked away from wearing the fabric of reform to long for the pleasure and power of the Tammany world, he seems bewitched. The evil influence of Crokerism overwhelms him. His own handiwork flies from its place to vex him. He is tangled in the threads of his own spinning. The web of his own political declarations enmeshes him. The rope of his own logic ties him down. The glass in which he once saw moral issues clearly lies shattered. The old Shepard is no more.

"Out flew the web and floated wide,  
The mirror cracked from side to side.  
The curse is come upon me, cried  
The Lady of Shalott."

Again in the same newspaper there is an editorial not inaply entitled, "Plain Words."

"... Is the mantle of charity broad enough to cover even such a monstrous departure from the truth as Mr. Shepard has made in this instance? We are still anxious to think so. But we must tell Mr. Shepard plainly that no man who honestly believes what he urged all to believe four years ago considers it in the slightest degree unfair or indecorous to declare an utter contempt for his present course. ... We have his own authority for declaring that his candidacy is a personal degradation and a public affront."

Yet this newspaper has just printed this:

"Mr. Shepard would have served the public better in the field of politics if he had been able to look at things more simply and directly. Yet he was of service, for his ideals were high and generous and he was ever ready to contribute according to his power to the promotion of good causes and to the alleviation of the evils of our economic and social order. As a good citizen, he will be remembered, and missed."

Another newspaper said: "Because he does not do this" (pledge himself to put Murphy and Devery out of office), "and will not under any compulsion, Mr. Shepard's sincerity is questioned day by day. Yet he insists that he is talking to the people with perfect frankness." His attitude on this Devery question was said, in an earlier part of the same editorial, to be "juggling and not at all skilful juggling."

This newspaper, in an editorial characterized by uncompromising indignation and biting satire, expressed the view that if Hercules had been the like of Mr. Shepard, the Augean stables would have remained foul and unclean and a stench in the nostrils of the ancients. Again it spoke of the "delusive pretenses" of the Shepard campaign and added: "The political ruin of its leader, whatever the result of the election, seems clear."

The same newspaper, in the course of a long editorial, full of a keen appreciation of his life, said:

"Apart from the difficulties his high standard made for him in political life, it may be that Mr. Shepard's intensity of conviction and habitual rigidity of conscience led him to hold secondary and compromisable opinions too firmly for success in dealing with the general run of political workers, even those in sympathy with his ends. But there was no limit to the confidence he inspired in his fidelity and unselfishness, in his courage and enlightened patriotism, national and municipal. He was one of the most trusted and active workers and leaders in civil-service reform. . . . The personality of Mr. Shepard was exceedingly winning. His tastes were refined, his culture was broad and fine. . . . His death is a most serious loss to his city and his country, and a very mournful one to those whose privilege it was to know his noble nature in the intimacy of personal friendship."

Another newspaper offered Mr. Shepard the alternative of having the public disbelieve his intellectuality or "his desire for righteousness," and evinced a strong disposition to cast its vote for his intellectuality.

All doubts on the subject, however, were promptly resolved, for the same newspaper declared:

"If you were a man who lived on the price of a woman's shame you would have no doubt as to how to vote next Tuesday, or as to whether you would vote at all. You would vote, and vote for Edward Morse Shepard.

"If you were one who kept a misnamed hotel into which Stanton Street 'cadets' tempted to their ruin the daughters of poor men and women who had but little in their homes of anything but dreariness and drudgery, you would have no doubt as to how you would vote. It would never occur to you to do anything for pleasure or for profit on election day before you had cast your vote for Edward Morse Shepard.

"If you kept a 'fence' you would see to it that every bookkeeper and clerk in your employ voted early on election day, and that he voted for Edward Morse Shepard.

"If you made your living by running crooked roulette wheels or fixed faro boxes, or by manufacturing those precious articles of commerce, you would feel yourself remiss in your best interests if you did not vote for Edward Morse Shepard."

And again it said:

"One of the happy results of yesterday's election is the enforced retirement from politics of Mr. Edward M. Shepard, of Brooklyn. He can never again pose as a character of lofty 'ideals,' deserving of confidence because of his superior moral elevation, and the period of his usefulness to Tammany or for any political purpose is brought to an end.

"After having advertised himself for years as a peculiarly exalted type of 'reformer' whose specialty was horror of the iniquity of Tammany government, Shepard sold out to Tammany the moment it offered him his price in a nomination as the head of its ticket in a campaign where honest popular sentiment was struggling for its overthrow. That was the time chosen by Shepard to desert from the opposition to Tammany and enter into the service of the enemy he had pretended so long to hate and loathe.

"A very miserable, a very contemptible character Edward M. Shepard has proved himself to be, and he will not be missed in the field of politics from which popular revulsion has now retired him. Not even Tammany is a mourner at his political grave. It sheds no tears as it sees its worthless tool buried out of sight and out of memory."

The following from the same newspaper which published the two editorials last quoted would seem to be a suggestive end to these quotations:

"In Edward M. Shepard this city loses a man who through many years had served it in a variety of ways, with a distinction that was constant and a loyalty that was invariable.

"In the public life of the city and the State, in the political activities of the party of which he was a distinguished member, in that profession in which he attained conspicuous eminence, Mr. Shepard was high-minded, honorable, and unselfish.

"To those rare abilities which showed themselves in a wide range of contemporary and active endeavor, Mr. Shepard joined the attainments and the spirit of the scholar, and wrote with authority of the political history of the State and the nation.

"The measure of Mr. Shepard's services and reputation is far wider than this city, but within its limits his loyal and unselfish efforts earned for him the gratitude, the respect, and the admiration of his fellow-citizens."

Mr. Shepard never attained, or claimed to have attained,

to perfection, but, as these later editorials so eloquently bear witness, his life rose to a high level of accomplishment and sterling quality; he did his duty as a man and a citizen; he was generous in the giving of his ability for the best interests of the community in which he lived and was so justly honored; he held in the main true to the highest ideals, and from any reasonable point of view no one act of his, though it might have been regarded as a mistake, should have furnished the occasion for these utterances. Nor ought we to be able to read them without the sincere hope that such arraignments of men of unimpeachable character—which would be inconceivable on the part of the Press of London—may not, for want of a protest, ever come to be regarded here as having the authority of an accepted precedent.

We need not dwell overmuch on any attempted defense of the course pursued, for at best it would be only some kind of explanation which might perhaps be pleaded in mitigation, but certainly not in justification, of what was done. That the words used must have cut like a knife and stunned like a bludgeon is only too apparent. Fortunately, it was vouchsafed to Mr. Shepard, with his sensitive nature, to live long enough to see, during the Senatorial contest and at other times, a wholly different attitude of the Press toward him, and to have the satisfaction of knowing that, in the end, the esteem of all self-respecting men is the sure reward of a pure life and an honorable career; but the cruel and ugly wounds that had been made must have left scars for him to carry to the grave.

Then, too, the whole subject has a far-reaching significance quite apart from its relation to the individual primarily affected, for it is such episodes as these that lend weight to the otherwise frivolous views we so often hear expressed as to the unfairness and injustice of the newspaper of to-day; and it would be something little short of a calamity if any such opinion were generally entertained by thoughtful people.

For the Press of this country, on the whole, is neither unjust nor unfair, but is the most potent single agency we have for good, directing its vast and ever-widening influence in the interest of a better observance of law and order and for the promotion of a more responsive citizenship; it has escaped from the clutches of the political creed and party

and is in the best sense independent; it has a stanch courage and is entitled to the outpost of responsibility it occupies as the incorruptible sentinel to warn us of threatening peril; it takes vice by the throat with a rough hand and gives no quarter to wrong-doing; it is intolerant of sham, and does yeoman's service in exposing hypocrisy in the stocks to the contemptuous gaze; it is subservient to no interest and wears the yoke of no master; it seeks not only to prevent the science of economics from reaching a development that may operate to grind human beings as well as inanimate matter, but also to hold open the door of industrial opportunity, through which all may pass; and, more important than all, it is doing as much as is the pulpit to lift men up above the sordid things of life so that, on the extended horizon, there may be seen the vision, without which, in the language of the proverb of Scripture, the people perish.

And for the very reason that the Press holds steadfast to these articles of faith and is doing these great deeds, the judicious, even though they have no other recourse, may at least grieve when it fails to be true to the highest standards of impartiality and temperance in its judgment of men and of events.

JOSEPH S. AUERBACH.

# ASPECTS OF PUBLIC OWNERSHIP

BY SYDNEY BROOKS

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## IV

IN the previous articles in this series I have endeavored to establish certain points that may now be summarized with advantage to the clearness of the general argument. The first was that there is nothing creditable or derogatory in a more or a less acceptance of public ownership; that some of the most backward as well as some of the most advanced countries in the world have nationalized or municipalized a variety of public services that other nations, equally low and equally high in the scale of civilization and of prosperity, have preferred to leave in private hands; and that though the spirit and tendency of the times seem to point to an increasing expansion of State and municipal activities, the movement as yet is too young to enable one to prophesy its permanence or to claim it as a necessary element of progress. It is just as likely to lead to bankruptcy as to the paradise of the Socialists, and to a sustained reaction as to the extinction or supersession of the capitalistic system. No one who opposes it or is out of sympathy with it need fear the taunt with which he is sure to be assailed that he is withstanding "Destiny" or "Progress." No one who advocates it either as a general policy or in particular instances need waste more than a contemptuous smile on the reproach that he is thereby undermining the foundations either of society or of industry. The entrance of public authorities into the field of commercial enterprise is too recent a phenomenon, and its ascertained effects are too meager and contradictory to make it a suitable peg for such spacious generations as these. The more, indeed, we free ourselves from loose and grandiose abstractions about the evolution of our industrial and social systems the more

likely are we to strike a just mean in our judgment of the problems of public ownership.

Another point for which I have pleaded is that in the absence of any universal guiding principle each case of public ownership, each proposal to take a given utility under public control and management, must be tested on its merits, with an exclusive regard to all the local conditions that are likely to affect the project, and with no reliance on what other States or cities may have done or failed to do in circumstances which, however similar in appearance, can never be the same in reality. Every one remembers how, when Chicago in 1905 declared in favor of the municipalization of the street railways, the Mayor-elect invited Mr. Dalrymple, the manager of the Glasgow municipal tramways, to confer with him on the situation; how Mr. Dalrymple landed in the United States an ardent advocate of public ownership; how a few weeks in Chicago were enough to convince him that he had failed to allow for the utter dissimilarity of local conditions; and how he returned home saying in effect that Glasgow's meat would be Chicago's poison. That incident merely illustrated in a highly striking and personal form the conclusion to which every student of the general question finds himself irresistibly impelled—the conclusion that analogies drawn from one city to another, particularly when they are situated in different countries, and even from one public utility to another, are worthless, and worse than worthless.

A third contention, and a very important one, which these articles have sought to uphold is that the alternative is not, as it is commonly stated to be, between public ownership and the present system of private ownership, but between public ownership and an attainably better system of private ownership than now, generally speaking, obtains. The demand for the nationalization or the municipalization of the public utilities has many aspects. In part it is an extension of the same process of economic evolution which has given us already the big store and the monopolistic trust; in part it is a branch of a deliberate policy for transforming society by eliminating capitalism or by restricting it to spheres where it cannot clash with the larger public interests; in part also it represents the normal ambitions of every elected body to add to its powers and opportunities—ambitions that in an industrial age are bound to take on an increasingly industrial form. But above everything else, the cry for pub-

lic ownership is the outcome of the inadequacies, the friction, and in certain countries the corruption, of private enterprise in its relation to civic or national services. That is one of the central facts of the situation which can neither be ignored nor evaded. Either, as in Great Britain, private enterprise is roundly declared to be not enterprising enough for modern public needs, or, as in the United States, where its technical efficiency is less sharply challenged, it is accused of contaminating civic life and of disregarding or overriding the interests of the community for the sake of dividends. In either case, and whether their failings are mainly on the business or the moral side, it is the conduct of the corporations themselves that has given the chief point and stimulus to the agitation for public ownership. Dissatisfied with the abuses and shortcomings of the one system, people have rushed to embrace its precise opposite, believing that reform could only be effected by revolution, and heedless of the yet greater evils that revolution in its turn might bring upon them. As against this policy I have tried to show that the better way is not the banishment of private enterprise from the public-service field, but its stricter and more sensible regulation, and that half the case for municipal intervention in competitive trading would fall to the ground if corporations, while losing nothing of their efficiency and initiative as business organizations, were compelled to observe a more alert and constant regard for the interests of the community. The form this compulsion might take was outlined, and something more than outlined, in the second article of this series; and though the scheme there suggested may doubtless be criticized with much effect, its underlying contention—that it is possible so to regulate private ownership and management of the public services as to safeguard every right of the community and at the same time preserve the advantages of individual enterprise and the incentive of gain—is in my view very near the heart of the whole controversy.

A further point that it has been sought to develop is the difficulty of instituting any comparison between the financial results of municipal and of joint-stock-company trading. The difficulty arises from the fact that a municipality and a corporation must mentally regard any given undertaking from different points of view, the latter thinking mainly of its shareholders and dividends, and the former of the advan-

tages, which may be financial but are more likely to be social or sanitary, accruing to the community as a whole. Everybody agrees that there are certain enterprises which ought to be managed by the local authority as efficiently and economically, of course, as possible, but without any hope of profit. In the preceding article I dwelt on this point at some length, thus partially conceding one of the positions which the advocates of public ownership have always taken up—namely, that there are cases in which the communal operation of a public service cannot be rightly assessed by the ordinary test of a commercial audit. At the same time, I brought a variety of *a priori* arguments against another and equally favorite position of theirs—namely, that municipalities are better qualified to make a business success of their undertakings than are corporations. This contention was strongly assailed in the last article. If we assume that it was successfully assailed and that as a general rule local authorities are likely to be less careful, less provident, less business-like than ordinary boards of directors, and if we bear in mind the admission that a municipality at times is justified in incurring a monetary loss for the sake of some greater public gain, then the question we are clearly confronted with is this: Can any line be drawn between those enterprises that should be in public hands and those that should not? Is there any principle that can be laid down for guidance, or any formula at once explicit and comprehensive enough to serve as a touchstone in all emergencies?

The answer is that no such simple solution of the difficulty has been, or probably ever will be, arrived at. But there are certain considerations which when taken together may serve as something more than makeshift direction-posts. The most earnest advocates of public ownership, for instance, admit that a municipality is not justified in attempting to meet any demand which is not sufficiently extensive and constant to keep the necessary plant fully employed. The most ardent opponents of public ownership, on the other hand, admit that in the case of many utilities the balance of advantages points to their municipalization. Thus practically no one objects to seeing sewerage systems, markets, water-works, baths, cemeteries, and slaughter-houses in public hands, while a very strong case, as a rule, can be made out for turning over harbors and docks to the management of the local authorities. In all these cases where municipal-

ization is generally held to be necessary, it appears, says Major Leonard Darwin, that there are three conditions usually fulfilled. (1) "The enterprise is one which would be a complete monopoly were it in private hands." (2) "The services rendered are of great importance to the community at large." (3) "The fair price to be paid for the work performed is not readily estimated in advance." When an undertaking fulfils these three conditions the argument for bringing it under public ownership, with or without public operation, is so strong as to be practically overwhelming. Every absolute and irreplaceable monopoly supplying a community with some essential utility on terms that cannot be regulated beforehand is *ipso facto* a fit subject for municipalization.

It is rather, however, over those enterprises that tend to become monopolies and that present no insuperable difficulties of public supervision and control—such as gas-works, electric lighting, street-cars, and telephones—that the battle for and against municipalization has chiefly raged. And here the example and experiences of Great Britain are of the first value and importance. No country in the world has plunged so heavily into the policy of municipal trading and none shows its good effects and its bad effects more plainly. The local debt of the United Kingdom at this moment amounts to over \$3,000,000,000; the capital sunk in reproductive undertakings considerably exceeds \$1,500,000,000; and the average per capita debt of the eighteen leading British cities is some \$114, or nearly three times as much as the average per capita debt of the eighteen principal cities in the United States. It is to Great Britain that the advocates of public ownership look to vindicate their ideas; it is from Great Britain that they draw their inspiration; and it is British example that they constantly hold up as a pattern for other nations. A study, therefore, of the general results produced in Great Britain by municipal trading on a large scale ought to be illuminating. But here again it is necessary to enter a caveat against the fallacy of arguing by analogies. It is necessary, for instance, to remember that Great Britain has evolved a high standard of civic purity; that practically there is no such thing as the spoils system in British municipal life; that the tradition of voluntary public service, while it is losing something of its old power, is still a vital force among the better elements

of the community; that municipal government throughout Great Britain has long since assumed a settled and stable form; and that countries which lack these advantages are fatally handicapped in the attempt to reproduce an experiment which owes such success as it has achieved in Great Britain to a unique combination of circumstances and which, if and so far as it has failed in Great Britain, is likely to be far more disastrous under other and less fortunate conditions.

There is a further fallacy that must be guarded against with equal vigilance, and that is the fallacy of seizing upon one particular town or one particular industry and arguing from it as to the universal beneficence or injuriousness of municipalization. Isolated instances in so complex a matter are of little real value, and we can only draw sound conclusions from the British experiments in public ownership if we treat them more or less in bulk and strike a dispassionate average after a survey of all the facts. Municipal trading, like any other political phenomenon, must be judged as a whole; its failures must be set against its successes; and the device of concentrating upon local and exceptional cases, whether by way of eulogy or of warning, ought to be ruled out of court. It is the more necessary to insist upon this because few subjects lend themselves so readily to the hasty, specious, *ex parte* assertions that are the worst enemies of truth. Major Leonard Darwin has taken what is unquestionably the better way when in attempting to arrive at the financial results of public ownership in Great Britain he likens the whole municipal industry of the country to a large industrial corporation. Analyzing its balance-sheet with masterly precision, he finds that public ownership in Great Britain earns profits that amount to 3.8 per cent. on the total capital provided if unremunerative works, such as cemeteries and public baths, are included, and to 4 per cent. if they are excluded. But these profits, meager as they are, are subject to a considerable discount. In the first place, provision has to be made out of them for paying interest on the loans and for maintaining a sinking fund; and when these charges have been satisfied the balance that is left over and that may be devoted to the relief of local taxation is less than one-tenth of the gross profits and represents at most four-tenths per cent. on the total capital. It is true that as time goes on and the debts are

liquidated the city treasury will get the benefit of a considerably larger proportion of the gross profits. But it will never get the whole of them. British municipalities, rightly or wrongly—and the point is one that admits of argument—make at present a deliberately inadequate provision for depreciation, leaving it to the future to furnish either from the profits or from further loans the outlay that will become necessary for the renewal or improvement of their industrial plant. Apart, moreover, from the capital expenditure which will thus have to be met, there are several reasons for doubting whether municipalities will be able to raise money as cheaply in the future as in the past, and whether their profits from their undertakings will not tend to diminish. Even, therefore, if we accept four per cent. as the present gross returns on the policy of public ownership, and look forward to the day when the liabilities incurred in contracting the loans have been extinguished, the municipal exchequer will certainly not be able to possess itself of more than a portion of the profits.

But can one, as a matter of fact, accept the figures contained in municipal balance-sheets at their face value? Can one rely on the profit of four per cent. which they disclose as a trustworthy index to the real situation? The question is a very necessary one, and it leads to the heart of the impassioned controversy over the ways and methods of municipal accounting. Those ways and methods are such that it is practically impossible to discover the true financial position of any municipal undertaking or to obtain the comprehensive and detailed information that would make a comparison between public and private management both practicable and instructive. Thus, generally speaking, the amount allotted to the depreciation account of municipal enterprises is less than one-eighth per cent. on the total capital. Thus, too, municipal committees in control of the local street-car service are apt to charge the expenses of street widening, not to the specific undertaking which has necessitated them, but to the general account. "A case in point," writes Mr. Robert P. Porter in his spirited volume on *The Dangers of Municipal Trading*, "is Liverpool. At the end of last year (1905) the local debt had been increased by over £1,000,000 for street widenings made on account of the municipal tramways, but when it was proposed to charge the tramway undertaking with a moiety

of the expense the motion was defeated. . . . Another municipality boasted of large street-railway profits. Steps were taken to examine the accounts, and it was found that £300,000 had been charged to the Public Works Committee of this municipality for street widening necessitated entirely by the installation of street railways. . . . The London County Council, however, have gone much further than this. Their tramway extensions necessitated extensive street improvements costing some millions sterling, only a tithe of the sum spent on which has been allowed to appear in the tramways' account, the other nine-tenths falling on the taxes. This easy method of relieving the capital expenditure of a municipal undertaking became revealed by the publication of a report wrung from the Council by the Moderate party in order that some light might be thrown upon the remarkable absence from the tramways' account of considerable capital expenditure made solely on account of the tramways. It was ascertained to be no less than £4,044,844, of which only £377,260 was debited to the tramway undertaking. The people of London were saddled with the rest." In the same way the committees responsible for these and similar enterprises rarely remember to saddle their accounts with any share of the expense of maintaining the official staff of the municipality, though with every fresh outburst of municipalization the staff has to be increased in number or its members have to receive a higher salary. They forget, again, as a rule, to debit their undertakings with office and clerical expenses, whereas the balance-sheet of every private corporation includes as a matter of course the cost of renting premises, of employing legal advice, and of maintaining its staff of clerks. Similarly there is very good ground for believing that the plants and property owned by municipalities in connection with their trading ventures are assessed much more leniently than if they were in private hands; just as municipalities that supply their own electric light are apt to swell their "profits" by charging a disproportionately high rate for lighting the streets and municipal offices.

All these peculiarities of municipal bookkeeping have to be taken into account; and their cumulative effect is undoubtedly to raise a suspicion that the estimated profit of four per cent. is to some extent, and probably to a considerable extent, fictitious. But there remains a far heavier deduction to be made from it than any I have so far enumer-

ated. Every municipality that purchases a public utility from its private owners, besides being obliged to raise a loan to complete the purchase, to pay interest on the money thus borrowed, and to set aside an annual sum out of the profits by way of a sinking fund, also surrenders the rental which the private owners had agreed to pay into the city exchequer. This is a consideration which, though constantly overlooked, and especially by the advocates of municipal ownership, is really vital. To trace its many and varied consequences and implications would take one far beyond the scope of these articles. But I may, perhaps, be allowed to summarize the conclusions to which I have been led by a study of all, or nearly all, the available evidence. The first is that there is no street-car service, no gas or electric lighting plant, and no telephone system at present owned and operated by a British municipality that would not bring in larger net profits to the local exchequer if its conduct and management were leased to a private corporation. The second is that if both the ownership and the operation of these utilities had remained with or were handed over to private corporations, under a proper system of regulation, the local exchequers would be the gainers by a considerably larger sum than they now derive from the policy of municipalization or than they would derive from municipal ownership without municipal operation. In other words, from the standpoint of financial advantage to the municipal treasury and from the standpoint of relieving local taxation, the best system is that of private ownership and operation of the public services under due control and supervision of the local authority; the next best system is that of municipal ownership with the actual management and working of the undertaking leased to a corporation; and the worst and least profitable system is that of municipal ownership combined with municipal operation.

If the day should ever come when British municipalities would find themselves free from debt on account of their trading ventures, in possession of a series of monopolies not one of which was imperiled by internal improvements or external competition, and able, therefore, to devote most of their gross profits to the relief of taxation, these conclusions might, no doubt, have to be revised. But until that day comes I believe them to be founded on fact and reason. For the present, at any rate, and in spite of all the figures

that are flourished before us of Manchester's success with her gas-works, and Glasgow's with her street-cars, it remains extremely doubtful whether British municipalities as a whole are not actually losing money instead of making it on their municipal enterprises, and whether their alleged gross profit of four per cent. is not wiped out altogether by the interest on the loans, by the provision for the sinking fund, by the subtraction of the various bookkeeping artifices which have served to bolster it up, and by the necessity of setting against it the rentals from private corporations that were surrendered when municipalization was resorted to. "English statistics," says one of their most careful and well-equipped students, Major Leonard Darwin, "do not disprove, and may, it appears to me, be quoted as giving some support to the view which I hold—namely, that English cities have increased the immediate burden of taxation by their municipal ventures by over one per cent. on the capital sunk therein." And as the sinking funds which British municipalities are compelled to find for the redemption of their industrial debts also amount to a little over one per cent. on the total capital, he concludes that "every penny which English cities have invested in industrial ventures has been raised by taxation which would not have been raised had the industries in question not been municipalized. The profits which will eventually be made out of municipal industries consist, therefore, of nothing but the interest on the invested savings of the people: an interest which each individual might have obtained for himself had the money not been drawn from him by taxation. If this be a correct view of the situation, it seems fair to conclude that England, if she is not losing, is gaining nothing whatever by her municipal enterprises."

It appears from all this to be a moderately reasonable inference that, if British experience may be taken as a guide, the hope of any appreciable relief to local taxation or of any appreciable addition to local revenues as the result of municipal trading is not likely to be realized. But it must not be forgotten that the friends of public ownership quite legitimately refuse to be tied down exclusively to the test of finance, and that they insist that even if the ratepayer may not benefit much in pocket by the municipalization of the public services, he benefits as a consumer by the lowered cost and improved quality of the services thus placed at his dis-

posal. One of the commonest methods, indeed, of carrying on this controversy is to publish deadly parallel columns of the prices charged for gas or electric light or street-car fares by municipalities and by corporations respectively. Nothing could be more natural than such a method and nothing more essentially unfair, for to make such comparisons really valuable it would be necessary to consider a vast variety of factors that are usually ignored—the cost of raw material and of labor in the different cities under question, the size of the population and of the territory served by the municipality on the one hand and by the corporation with which it is compared on the other, the terms and nature of the corporation's franchise, the return it had pledged itself to make to the city treasury in the form of rental, and so on. It is impossible to reduce all these factors to any common denominator; the data does not exist to enable one to draw a scientific and exhaustive comparison, or indeed any comparison at all that is not wholly casual and restricted. At the same time, the probability is that if all the necessary data could be collected and examined, municipal trading in Great Britain would show a certain small advantage over private corporations in the matter of the cost of the services supplied, but would not show any corresponding advantage in point of quality. Those, however, are assumptions which, whether reasonable or otherwise, can neither be proved nor disproved. Meanwhile what appears to be certain from a study of British experiences is that municipal enterprise always leads to an immediate increase of taxation; that its other financial results, whether good or ill, are at present so indefinite as to be almost negligible; and that the many and varied abuses of a political and economic character which it entails cannot, therefore, be condoned on the plea of its commercial success.

SYDNEY BROOKS.

*(To be Continued)*

# THE STONES OF GAFSA

BY NORMAN DOUGLAS

I CANNOT think what has induced me to stay so long at this oasis of Gafsa, in the bleak uplands of southern Tunisia. There are many drawbacks to the place—chiefest of all, the intense cold at this season (January). And not far away are the sunny and low-lying palm groves of the Djerid, Tozeur, and Nefta, the destination of my voyage, as originally planned out. Yet here I am, held fast by some unaccountable spell. It must be those fascinating pre-historic flints. . . .

There is a low hill near the town, marked Meda hill on the map. Thither, after settling my concerns at the hotel, I swiftly bent my steps on the evening of my arrival, but came too late for the sunset; the colors had already faded out of things terrestrial; only overhead the play of blue and green and rose went on, freezing slowly to pale indigo. It was light enough, however, to see the configuration of the country; to realize the significance of this speck of culture in the waste, its strategic value: Gafsa is a veritable key of the Sahara. Barren mountains rise up on all sides save the south; and there, where the two highest ranges converge from east to west and almost meet, where the broad stream of the Oued Baiesh has carved itself a channel through the opening—there, at the very narrowest point—sits the oasis. A tangle of palms that sweep southward in a radiant trail of green, the crenelated walls of the Kasbah fortress gleaming through the interstices of the foliage; the whole verdant vision swathed in an orange-tawny frame of desolation, of things non-human.

Darkness was descending and still I lingered, my only companion being a dark brown dog of the jackal type, who walked round me suspiciously and barked, or rather whined, without ceasing. At last I took up a stone and he ran away.

But the stone remained in my hand; I glanced at it and saw that it was an implement of worked flint. Here was a discovery! Who were these carvers of stones, the aboriginals of Gafsa? How lived they?

A prolonged and melodious whistle from the distant railway-station served to remind me of the gulf of ages that separates these men from the life of our day. . . . But as if to efface without delay that consoling impression my downward path led me past a dark cavern before which was lighted a fire that threw gleams into its recesses; there was a family crouching around it; they lived in the hollow rock. A high-piled heap of bones near at hand suggested cannibalistic practices.

These, then, are the primitives of Gafsa. And for how long, I wonder, has this convenient shelter been inhabited? From time immemorial, perhaps; ever since the days of those others. And, after all, how little have they changed in the intervening thousands of years! The wild-eyed young wench, with her disheveled hair, ferocious bangle-ornaments, tattooings, and nondescript blue rags open at the side and revealing charms well fitted to disquiet some robust savage—what has such a creature in common with the rest of us? Not even certain raptures, misdeemed primeval; hardly more than what falls to man and beast alike. On my appearance she rose up and eyed me unabashed, then sank to the ground again amid her uncouth and naked cubs; the rock, she said, was warmer than the black tents; they paid no rent; for the rest, her man would return forthwith. And while she still spoke there was a clattering of stones, and a herd of goats scrambled up and vanished within the opening. The partner was neither pleased nor displeased at seeing me there; every day he went to pasture his flock on the slope of the opposite hills, returning at nightfall; he tried to be civil, but failed for want of vocabulary. I gave him the salutation and passed on in the gloaming. . . .

The Kasbah is an interesting place. It is a Byzantine construction, covering a large expanse of ground and rebuilt by the French on theatrical lines, with decorative bastions and other warlike pomp; the old walls are smothered under a modern layer of plaster divided into square fields to imitate solid stone-work; it looks best in the moonlight, when this childish cardboard effect is toned down. Thousands of blocks of Roman masonry have been wrought

into those walls, as well as such a number of ancient inscriptions that a French traveler described the fortress as a "*musée épigraphique*." Yes, this must be the attraction of Gafsa—those old stones lingering like ghosts among a people who have lost all memory of their meaning. There is no continuity of tradition here, as in countries like Greece, and this complete rupture of all links with the past, in the face of these speaking memorials, has a certain charm.

One of the two hot springs of Gafsa is inclosed within this Kasbah, while the other rises near at hand and flows into the celebrated baths—the *Termid*, as the natives, using an old Greek word, still call it. It is a large and deep stone basin half full of warm water, in which small fishes, snakes, and tortoises disport themselves; the massive engirdling walls demonstrate its Roman origin. Thick mists hang over the "termid" in the early mornings, when the air is chilly, but later on it becomes a lively place, full of laughter and splashings. Here for a sou you may get the boys to jump down from the parapet and wallow in the muddy ooze at the bottom; the water, though transparent, is not colorless, but of the blue-green tint of the aquamarine crystal. Above this basin is another one, that of the women, with an old Latin inscription running along one of its flanks; and below it, at the foot of a lurid staircase, a suite of subterranean (Roman) chambers, a kind of Turkish bath for men, where the water hurries darkly through; the place is reeking with a steamy heat and objectionable beyond words—it would not be easy to describe, in the language of polite society, those features in which it is most repulsive to civilized men.

How easily, as in former days, might now a health-giving wonder be created out of these waters of Gafsa that well up in a river of warmth and purity only to be hopelessly contaminated! The French tried the experiment, but the natives objected and they gave way; these are the spots on the sunny ideal of "pacific penetration." I am all for keeping up local color, even when it entails, as it generally does, a certain percentage of local smells; yet it seems a pity that such glorious hot springs, a gift of the gods in a climate like this, should be converted into a *cloaca maxima*, especially in Gafsa, which already boasts of a superfluity of open drains.

But my friend the magistrate showed me a special bath-

ing-room which has lately been built for the use of Europeans. We tried the door and found it locked.

Where was the key?

At the *Ponts et Chaussées*.

I promptly went there and discovered an elderly official of ample proportions dozing in a trim apartment—the chief of the staff. Great was this gentleman's condescension; he opened his eyes wide, bade me be seated, and inquired after my wants.

The key? The key of the "piscine"? He regretted he could give me no information as to its whereabouts, no information whatever; he had never so much as seen the key in question; perhaps it had been lost—perhaps it never existed. Several tourists, he added, had already come on the same quest as myself; he also on one occasion last year thought he would like to take a bath, but—what would you? There was no key! If I liked to bathe, I might go to the tank at the gardens of Sidi Ahmed Zarroung.

I gently insisted, pointing out that I did not care for a walk across the wind-swept desert only to dip myself into a pool of lukewarm and pestilentially sulphurous water. But "the key" was evidently a sore subject.

"There is no key, monsieur"; and he accompanied the words with a portentous negative nod that blended the solicitude of a trusted friend with the firmness of a Bismarck. This closed the discussion; with expressions of undying gratitude, and a few remarks as to the palpable advantages to be derived from keeping a public bathing-room permanently locked, I left him to his well-earned slumbers. . . .

This collecting of flint implements grows upon one at Gafsa: it is in the air. And I find that quite a number of persons have anticipated me in this amusement, and even written ponderous tomes upon the subject, as is generally the case when one thinks to have made a scientific discovery. These stones are scattered all over the plain and Monsieur Couillault has traced the site of several workshops—"ateliers"—of prehistoric weapons near Sidi Mansur, which lies within half a mile of Gafsa, whence he has extracted quantities of flints of every shape; among them some saws and a miniature spade.

My collection of these relics, casually picked up here and there, is already considerable, and illustrates every period of those early ages—uncouth battle-axes and spear-points;

fine needles, apparently used for sewing skins together; the so-called "laurel leaves" as thin as cardboard; knife-blades; instruments for scraping beast-hides—all of flint. What interests me most are certain round throwing-stones; a few are flat on both sides, but others, evidently the more popular shape, are flat below and rise to a cone above. Of these latter I have a series of various sizes; the largest are for men's hands, but there are smaller ones not more than eleven centimetres round for the use of children: one thinks of the fierce little hands that wielded them these many thousand years ago. Even now the natives will throw by preference with a stone of this disk-like shape, the cone pointing downward. But, to judge by the size of their implements, the hands of this pre-historic race can hardly have been as large as those of their modern descendants.

Then, as now, Gafsa must have been an important site; the number of these weapons is astonishing. Vast populations have drifted down the stream of time at this spot, leaving no name or mark behind them; nothing save these relics, fashioned, by the merest of chances, out of a practically imperishable material. Steel and copper would have rotted away long ago, and the stoutest marble palaces crumbled to dust under the teeth of the desert air.

The bed of the Oued Baiesh, which is nearly half a mile broad in some places, is rich in these worked flints that have been washed out of its steep banks by the floods. Walking here the other day with a miserable young Arab who, I verily believe, had attached himself to me out of sheer boredom (since he never asked for a *sou*), I observed in the distance a solitary individual, a European, pacing slowly along, as though wrapped in meditation: every now and then he bent down to the ground.

"That's a French gentleman from Gafsa. He collects those stones of yours all day long."

Another amateur, I thought.

"But not like yourself," he went on. "He picks them up, bad and good, and when they don't look nice he works at them with iron things. I've seen them. He makes very pretty stones, much prettier than yours. Then he sends them away."

"How do you know this?"

"I've looked in at his window."

A modern "*atelier*" of flints—this was an amusing reve-

lation. Perhaps—who knows?—half the museums of the world are stocked with these superior products.

Sages will be interested to learn that Professor Koken of Tübingen, in a learned pamphlet, lays it down that these flints of Gafsa belong to the Mesvinian, Strepyian, Præchelian—to say nothing of the Mousterian, Aurignacian, Solutrean, Magdalenian, and other types. So be it. He further says, what is more intelligible to the uninitiated, that a bed of hard conglomerate which crops up at Gafsa on either side of the Oued Baiesh has been raised in days of yore; it was raised so slowly that the river found time to carve itself a bed through it during the process of elevation; nevertheless, a certain class of these artificial implements, imbedded since God knows when, already formed part of this “natural” conglomerate ere it began to uplift itself. This gives one some idea of the abysm of time that lies between us and the skin-clad men who lived here in olden days.

An abysm of time. . . .

But I remembered the cave wench of the Meda hill. And my companion to-day was of the same grade—a characteristic semi-nomad boy of the poorest class; an orphan: of course (they are nearly all orphans), and quite abandoned. His whole vocabulary could not have exceeded 150 words; he had never heard of the Apostle of Allah or his sacred book; he did not know his own age; he could only run and throw stones and endure, like a beast, those ceaseless illnesses of which death alone—an early death, as a rule—is allowed to cure them. His clothing was an undershirt and the inevitable burnous, brown with dirt.

“What have you done to-day?” I asked him.

“Nothing.”

“And yesterday?”

“Nothing. Why should I do anything?”

“Don’t you *ever* wash?”

“I have nobody to wash me.”

And so the last few days have passed. Every morning I make solemn preparations for my departure to Tozeur, where the sun, they say, still exhales a certain warmth. But I end in remaining here, despite the Siberian climate.

The glacial wind is less felt in the oasis, and the best time to visit this grove is by night, when the moon plays wonderful tricks of light and shadow with the over-arching foliage. The smooth sandy stretches at the outskirts of the gardens

shine like water at rest, on which the leaves of an occasional sparse tuft of palms are etched with a crystalline hardness of delineation. Such is the abundance of water, that these Gafsa plantations have a character different from others of this province; they are more artlessly furnished, with rough, park-like districts and a not unpleasing impression of riot and waste—waste in the midst of plenty. Then there is a delightful Theocritean bit of country, the temperate region at the tail-end of the grove. It reminds one of southern Calabria. Only olives grow here—seventy-five thousand of them. Besides their silvery-gray trunks you may see herds of the small but brightly tinted cattle reposing; the ground is pied with daisies and buttercups, oleanders border the streamlets, and the plaintive notes of the djouak, the pastoral reed of the nomads, resound from some hidden copse. It must be charming here in the springtime.

But do what he will, a man who has lived in the tropics becomes rather *blasé* in the matter of vegetation.

Besides, there are no flints to be found here.

Ah, Mr. Koken, Mr. Koken!—those light words of yours have borne a heavy fruit. I possess four hundred implements now, and they will double the weight of my luggage and ruin my starched shirts, especially those formidable “Praechellean” skull-cleavers. Perhaps it will be safest after all, to throw the whole collection away again, for I know exactly what the customs officer at Marseilles will say when he peeps into my bag: “*Tiens, des cailloux! Monsieur est botaniste?*” And then a crowd of people will assemble, to whom I must explain everything, with the result of being arrested for smuggling forbidden mining samples out of a French colony, and ending my days in some insanitary French prison.

Besides the oasis, there are other interesting walks in the neighborhood of Gafsa, but I can imagine nothing more curious than the town itself; a place of some five thousand inhabitants, about a thousand of whom are Jews, with a sprinkling of Italian trades-people and French officials and soldiers. Beyond naming its streets and putting up a few lamps, the government has left it in its Arab condition; the roadways are unpaved, the houses lean this way and that, and, being built of sun-dried earth-tinted brick, have an air of crumbling to pieces before one’s very eyes. Everywhere are immense blocks of chiselled stone worked into the

ephemeral Arab clay as doorsteps or lintels, or lying about at random, or utilized as seats at the house-entrance; they date from Roman or earlier times—columns, too, some of them adorned with the lotus pattern, the majority unpretentious and solid.

What do the natives think of these relics of past civilizations? Do they ever wonder whence they came? “The stones are there,” they will tell you. Yet the wiser among them will speak of *Ruman*: they have heard of *Ruman* mon-  
eys and antiquities.

Melkarth, hero of colonization, is said to have surrounded Gafsa with a wall, pierced by a hundred gates, whence its presumable name Hecatompilos, the city of a hundred gates. The Egyptians ruled it; then the Phoenicians, who called it Kafaz, the walled; and after the destruction of Carthage it became the retreat and treasure-house of Numidian Kings. Greeks, too, exercised a powerful influence upon the place, and all these civilized peoples had prepared Gafsa to appreciate the beneficent rule of the Romans. Then came Vandals and Byzantines, who gradually grew too weak to resist the floods of plundering Arab nomads; the rich merchants fled, their palaces fell to ruins, the town became a collection of mud huts inhabited by poor cultivators living in terror of the neighboring Hammama tribe of true Arabs, who actually forbade them to walk beyond the limits of the Jebel Assalah—a couple of miles distant. So the French found them in 1881.

The place, therefore, has gone through too many vicissitudes to be anything but a witches’ cauldron of mixed races. Seldom one sees a handsome or characteristic face; they have not the wild solemnity of the desert folk, nor yet the etiolated, gentle graces of the Tunisian citizen class; much less the lily-like personal beauty of the blond Algerian Berbers. Apart from some men that display the features of the savage Neanderthal brood that lived here in pre-historic times, the only pure race-type that survives is of unquestionably Egyptian origin; no wonder, since Egyptian invasions of this region went on for five centuries, culminating in the extended sea-dominion of Thotmes III.

A bastard Greco-Latin was the language of the place up to the thirteenth century A.D.

This confusion of blood has done one thing for them—it has given them an uncommon laxity in religious matters.

They are the least bigoted Orientals one could wish to meet; only fifteen in a hundred, perhaps even less, perform the devotions prescribed by the prophet. And it is part of their charming heterodoxy to be dog-eaters. They will catch and devour each others' dogs; they even breed them for the market, though they dare not expose the meat publicly, any more than that of swine, which they eat with relish.

Gafsa lies high, and I ask myself whether its fierce shiftings of temperature, its nocturnal radiation that splits the very rocks and renders life impossible for many plants (outside the cultivated zone, which equalizes these extremes)—whether all this has not had a numbing and stupefying influence on the character of the inhabitants. Would not a man, under such perennial vexations, end in bowing his head and letting things take their course?

That witchery of Orientalism, with its immemorial customs, its wondrous hues of earth and sky—it exists, chiefly, for the delectation of hyperborean dreamers. The desert life and those many-tinted, moldering cities have their attraction, but the misery at many hundred intermediate places like Gafsa is too great, too irremediable, to be otherwise than an eyesore. They have not solved the problem of the simple life, these shivering, blear-eyed folk. Their daily routine is the height of discomfort; they are forever ailing in health; they die like flies. Naturally enough; for it is not too much to say, of the poorer classes, that they eat dirt, and that only once a day.

But if fortune smiles, they will gorge like Eskimos, like boa-constrictors.

Only yesterday there swept past these doors a bright procession, going half-trot, to a lively chant of music: the funeral of a woman. I inquired of a passer-by the cause of her death.

“She ate too much, and burst.”

During the summer months, in the fruit-growing districts, quite a number of children will “burst” in this fashion every day.

The streets of Gafsa are swept every morning by a band of minor offenders who are marched out of prison for that purpose. But this cleansing does not extend to the native houses and court-yards, which survive in all their original, inconceivable squalor—squalor so uncompromising that it

has long ago ceased to be picturesque. What glimpses into humble interiors, when native secretiveness has not raised a rampart of earthen bricks at the inside of the entrance! In the day-time it is like looking into vast, abandoned pigsties, fantastically encumbered with palm-logs and Roman building-blocks and rubbish heaps which display the accumulated filth of generations—there is hardly a level yard of ground—rags and dust and decay! Here they live, the poorer sort, and no wonder they have as little sense of home as the wild creatures of the waste. But at night, when the most villainous objects take on mysterious shapes and meanings, these courtyards become grand; they assume an air of biblical desolation, as though the curse of Heaven had fallen upon the life they once witnessed.

*The stones are there.* This is another feature which they have in common with the beasts of earth: never to pause before the memorials of their own past. Goethe says that where men are silent stones will speak. If ever they spoke, it is among these crumbling composite walls of Gafsa.

A Roman inscription of the age of Hadrian, which now forms the step of an Arab house, will arrest your glance and turn your thoughts awhile in the direction of this dim, romantic figure. How little we really know of the Imperial wanderer, whose journeyings may still be traced by the monuments that sprang up in his footsteps! Never, since the world began, has there been a traveler in the grandiose style of Hadrian; he perambulated his world like a god, crowned with a halo of benevolence and omnipotence. And it occurs to me that there must be other relics of antiquity still buried under the soil of Gafsa, which is raised on a mound, like an island, above the surrounding country; particularly in the vicinity of the “termid,” which one may suppose to have lain near the center of the old town.

And where are the paving-stones? The painstaking John Leo says that the streets of Gafsa are “broad and paved like those of Naples or Florence.” Have they been slowly submerged under the débris of Arabism, or taken up and worked into the masonry of the Kasbah and other buildings? Not one is left: so much is certain.

I borrowed Sallust and tried to press some flavor out of his description of Marius’s march to the capture of Gafsa. It was a fine military performance, without a doubt; he led his troops by unsuspected paths across the desert, fell upon

the place, sacked and burned it, and divided the booty among his soldiers: all this, without the loss of a single man. But what interests me most is the style of Sallust himself. His outlook upon life, his choice of words, are the note of tomorrow, and when I compare with him certain writers of my own period, I seem to be unrolling a papyrus from Pharaoh's tomb, or spelling out the elucubrations of some maudlin scribe of Prester John.

The stones are there. And the quarries whence the Romans drew them have also been found; they lie in the flanks of the Jebel Assalah and are well worth a visit; legions of bats—*tirlils*, the Arabs call them—hang in noisome clusters from the roof.

Concerning these bats the following story, with which I will close this sketch, is told in Gafsa.

Not long ago a rich Englishman came here; he used to go out in the evenings to shoot bats; then he put them into bottles with spirits of wine—he was an amateur of bats. On the day of his departure from the place, he said to the polyglot Arab guide whom he had picked up somewhere on his wanderings:

“You will rejoin me in Tunis in ten days. Bring me more bats—*tirlils*: *comprenni?*—from this country. I will give you fifty centimes apiece.”

“*Bon, monsieur*,” said the guide, and took counsel with the folks of Gafsa, who, after certain stipulations and reservations, showed him the way into these quarries.

On the day appointed, he entered the rich tourist's hotel in Tunis, followed by ten porters, each carrying a large sack.

“Hello,” said the Englishman, “what's all this?”

“Bats, monsieur.”

“Eh? How much?”

“Bats; *tirlils*, *chauva-souris*, *pipistrolli* . . . They will need much bottles. Six hundred *tirlils* in each sack; ten sacks; six thousand *tirlils*. Much bottles! Three thousand francs, monsieur. Shall I open him?”

The tourist cast a dismayed glance over the sacks, gently heaving with life.

“Look here,” he said, “I'll give you fifty francs. . . .”

The Arab was surprised and grieved. He thought he was giving a pleasure to monsieur, who had asked for bats. He had been obliged to borrow money from his aged mother

to help him to pay the nine hundred francs already disbursed for assistance in catching the tirlils; he had risked his life; there were transport expenses, too: very heavy. He had traveled with many Englishmen and had always found them to be men of honor—men who kept their word. And in this case there were witnesses to the bargain who would be ready, if necessary, to go into the French tribunals and testify to what they had heard.

“I see. Well, come to-morrow morning, but go away now, quick! before I break your head; take your infernal tirlils to your *funduk* and be off: clear out—*comprenni?*”

And he looked so very angry that the Arab, a prudent fellow, walked backward out of the room, more surprised and grieved than ever.

Thanks to the disinterested and strenuous exertions of a Jewish international lawyer, the affair was settled out of court, after all—fifteen hundred francs, plus expenses of transport. . . .

NORMAN DOUGLAS.

# THE ENDOWED THEATER, AND THE UNIVERSITY

BY DONALD CLIVE STUART

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It is a debatable question whether or not the theater has a moral influence, but there is no doubt that the theater often has an immoral influence. That tragedy purges the soul of the passions of pity and fear, or that comedy *ridendo castigat mores*, are theories unknown to all but students of dramatic criticism. In choosing his evening's entertainment the theatergoer does not consider whether his soul needs purging or his morals need correcting. Indeed, he is likely to shun the so-called "serious play," for fear that it may set him to thinking or that his feelings may be unduly stirred; and he attends a performance which he hopes will amuse him—that and nothing more. The stage, however, including in this term for the moment all mimic representations of life behind footlights, is an important factor in our modern life and brings with it grave problems. There is no form of recreation which appeals to so large and general a public; and the lack of knowledge—not to say ignorance—of that public in regard to the drama is surprising and often painful, in spite of the fact that each individual is a self-constituted dramatic critic and gives his opinions with judicial gravity. When one stops to consider the influence of the theater on this unthinking public he realizes that it is deeper than most of us imagine; and, on the other hand, if one considers the influence of an unthinking public on the theater, he is not surprised at existing conditions in the drama.

No one will deny that a more solid drama is desirable. America, with its chains of beautiful theaters, lags behind in theatrical affairs in everything except lavish and expensive productions. The managers, with few exceptions, give the public what it pays for. They feel, like the average American, that the road to their pocket-books is long and life is

short; and the very few altruistic attempts made by the producers to educate the audience have resulted in failure. Since the conditions in front of the footlights make the conditions behind the footlights, the first step toward better drama will be a more intelligent audience. Instead of the matinee girl and the "tired business man" who ought to be at home, but who become responsible for the existence of frothy, worthless plays, there must be an audience of men and women of cultivated taste if American drama is ever to take its place in the world's art. The audience must not be afraid to think and feel. It must not shun all other sensations except the mere tickling of the risibilities.

How is this more highly educated and dramatically intelligent public to become large enough to exert any influence? Since it is a question of cultivation and education, one naturally turns to the universities for the solution of this problem. If the universities can develop a taste for good literature; in other words, if they are fulfilling an important part of their task; why can they not develop a taste for good drama? The chief reason is that drama cannot be taught and understood from books alone any more than music can be taught and understood from printed scores. The literary element in the plays of Shakespeare or Racine can be appreciated by reading and studying their printed pages, but the dramas of Shakespeare or Racine need presentation on a stage as much as do the Wagnerian dramas. In fact, the literary element of a play has little to do with its value as a drama. The study of the theater, like the study of physics or psychology, requires a laboratory; and without one the study of the drama must be, and is, in a great measure, a failure. This so-called dramatic laboratory need not necessarily be used for original experiments; for it is doubtful whether dramaturgy can be taught, although a course in play-writing is certainly an excellent way of studying the drama, even though such a course may fail to produce first-class playwrights. If a university is to be successful in this important branch of its teaching, it must provide a place in which its students can observe and study the best drama which the country has to offer. There is needed an endowed university theater, built on university ground and run under the supervision of the authorities—a theater in which students can learn and find amusement at the same time.

The undertaking to establish such a theater is not an easy one, but it is entirely feasible and already has the sanction and support of the authorities of one university. In regard to the endowment and whether the money could not be used in better ways, such as raising salaries or obtaining scholarly equipment, one can reply with grim truth that money is not freely given for such purposes, but generally goes into buildings of more or less usefulness. Men who would give freely for the establishment of an endowed theater would, perhaps, give for no other purpose. If a college can afford a memorial tower or gate costing a hundred thousand dollars and never used, or a stadium costing five hundred thousand to a million dollars and used twice a year, it can surely afford a theater to be used throughout the year for plays, college theatricals, lectures, and college exercises. Certainly a theater is as necessary as the inevitable campus museum which is unentered except by the janitor and unsuspecting sight-seers on their first visit.

Experts say the university theater should seat from a thousand to fifteen hundred people. With no boxes, and, if possible, only one balcony, practically every seat would be desirable. The audience-room should be comfortable and attractive, while a spacious foyer would invite free discussion and diversion between the acts. Plays of literary and dramatic merit would be presented, and one only has to review the past season's offerings to see that a goodly number of productions would be available. Some time before the performance a lecture should set forth the literary and dramatic history of the play, as is done each year in the Paris Odéon by the foremost French critics. Even the most abstruse scholars hardly need raise the cry *dilettante*, which is too often the bugaboo of narrow minds.

The support of producing managers is needed, and there must be co-operation on their part. We are assured that this will be forthcoming, and many of the men in the theatrical business are interested and are enthusiastic over the scheme. The university playhouse must be on or near a theatrical route. After the first cost of the theater, it is believed that the institution would be practically self-supporting in a college and town of any size. One well-known New York manager estimates the cost of a single performance from three hundred and fifty to six hundred dollars. Others would send their productions for seventy

or eighty per cent. of the gross receipts. The plan, therefore, seems practical and has received the indorsement of many scholars and managers.

Such an institution would offer a high form of intellectual pleasure to the students and faculty alike; not to mention the townspeople, who would aid materially in its maintenance. There are, however, other reasons for the existence of a university theater in addition to its educational value. In many educational centers theatrical conditions are worse than poor. The greater part of the productions which reach the students pander to low taste. The youth of this country is a theater-going youth, and if it cannot go to good theaters it goes to bad theaters. In default of the latter it patronizes moving-picture shows. That sixty per cent. of the students of a large western university had attended musical shows and that only thirty-five per cent. had seen one of nine good plays of the local season are statistics which should be interpreted not to show the deplorable taste of the students, but as evidence that their college is failing to do its duty in educating them and in cultivating high ideals in art. If young men and women naturally chose the best in art there would be little use for universities, and unless a university education teaches them to choose the best in art the system is a failure. Nor is this western institution to be singled out as a glaring example. There are scores of colleges in which the same conditions exist.

If there is no theatrical diversion in the college town there is a week-end or nightly excursion to the neighboring city on the part of the students to "see a show"—an exodus which the authorities have been known to attempt to check by compulsory Sunday chapel, and, at least in one case, by the establishment of a decent grill-room near the campus. Both of these schemes have their faults; but if a college theater were provided, giving sane and wholesome amusement, there would be fewer week-end journeys with their accompanying intellectual and moral laxness.

Said Bacon:

"Dramatic poesy, which has the theater for its world, would be of excellent use if well directed. For the stage is capable of no small influence both of discipline and corruption. Now of corruptions of this kind we have had enough, but the discipline of our time has been plainly neglected. And though in modern states play-acting is esteemed as a toy, except when it is too satirical and biting, yet among the ancients it was used

as a means of educating men's minds to virtue. Nay, it has been regarded by learned men and great philosophers as a kind of musician's bow by which men's minds may be played upon."

The theater which would most closely fit this description would be a theater controlled by a university. It might or might not educate men's minds to virtue, but it would help to put an end to many a corruption. Exerting its influence at an extremely impressionable time in a man's life, it would be invaluable to the individual; and in course of time these individuals would form a public which would demand the best in drama. Then this country can test the assertion: the public receives what it demands. If it is true—and we believe it is—we need then blush no longer at the thought of the drama we demand and receive.

DONALD CLIVE STUART.

# NIETZSCHE: A DOCTOR FOR SICK SOULS

BY LOUISE COLLIER WILLCOX

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THERE are two methods of coping with disease: the one consists in the application of approved remedies, the other in an attempt to ignore the illness by concentrating the mind upon opposing conditions by vigorously thinking of health. The former is still the method of conservative physicians; the latter is used by various new cults known as Christian Science, New Thought, and the like. With all the fierce vehemence of a Hebrew prophet, Nietzsche proclaimed in the last quarter of the last century that life was wrong and that he had found a cure. Alas! like other panaceas, his cure proved not infallible.

The new complete translation of the works of Nietzsche, under the editorship of Dr. Oscar Levy,\* has furnished an opening to various studies of Nietzsche. Anthony M. Ludovici furnishes a slight summary of Nietzsche's doctrine in the series *Philosophies: Ancient and Modern*. A. R. Orage has published an even slighter study, entitled *Friedrich Nietzsche, the Dionysian Spirit of the Age*; and within the year an English translation by J. M. Hone of Halévy's *Life of Friedrich Nietzsche* has appeared. The material then of Nietzsche's thought being now comfortably accessible to all American readers, it remains to be seen what influence this wounded and aristocratic thinker will have upon the happiest of modern democracies. It is unfortunate that translators should not have been more discreetly chosen. Nietzsche is first and foremost a poet, and to translate him adequately requires something more than even a scholastic knowledge of the two languages. Any one who will take the

\* The Complete Works of Friedrich Nietzsche. First authorized English translation. Edited by Oscar Levy. Edinburgh and London: T. N. Foulis. New York: The Macmillan Company.

trouble to compare in "*Zarathushtra*," for example, the German and the English of such wonderful poems as "*Das Tanzlied*," "*Das trunkene Lied*," "*Die stillste Stunde*," will realize at once that what goes to make the grandeur and beauty of the original is entirely lost in the translation. The *Genealogy of Morals* again is done into an English which it is almost impossible to understand at all until one turns it back into German. Why should any one writing English exclaim, "But you understand this not"? This is neither German nor is it English, but a conglomeration of two languages most distracting to read. Whether or not one looks upon Nietzsche as a great philosopher who had a definite contribution to make to the history of philosophic thinking, he was an ardent and poetic psychologist and an interesting reactionary, and his work, if put into English at all, should have been done by scholars with a literary sense. Of the authorized translations done under the editorship of Dr. Oscar Levy, one need only say that, while they are fairly accurate and may convey the meaning of what Nietzsche had to say, every vestige of literary charm and power is lost. Nothing could have been more unfortunate for the poor author, whose sufferings during life one might have supposed an adequate torture, than this turning of his terse, lucid, beautiful prose into dull, hobbling, awkward English after his death.

It is doubtful whether Nietzsche will ever have a very wide circle of readers in America. Despite the fact that he is the ideal aristocrat and Whitman the ideal democrat, he has many points in common with our own unaccepted poet. They share the same grandiose egoism, the same courage to "sing myself," the same impatience with sick conscience, repentance, and remorse, and, finally, the same sense that as the individual acquires independence, freedom, and an expansive outlook he will become whole and well. Indeed, the two other thinkers of whom Nietzsche constantly reminds us are Whitman and Blake. With an intrepidity no less than that of the "mad poet" of the eighteenth century in England, Nietzsche batters down existing standards and proclaims anxieties about right and wrong mere fanciful illnesses; he exults in the time when men shall go through the world like "laughing lions." "Throw away displeasure with your own being," he says. "Forgive yourself for being what you are. In any case you have in your-

self a ladder with a hundred rounds upon which you may climb to consciousness."

In studying Nietzsche it is necessary to make a distinct cleavage between his earlier and his later periods. In his later work he repudiated all that was mystical and all that even verged upon the supernatural, even a great deal of his theory of the Dionysian spirit. His early volumes are full of this distinction between the two illusions that go to make up the worth of life—the Dionysian and the Apollonian. But he was wise enough even in those early days to warn us (*Morgen Röthe*) that any great thinker who fancied he was founding a binding institution for future men might know of a surety that the zenith of his power was passed and that he was moving toward his own sunset. The fluidity of life and thought, constant change as the condition of growth, mutability, that first grief of man on earth, and subject for lamentation of all the poets, was the crux of Nietzsche's doctrine, and he began by accepting it. This rolling world was nothing but the chaotic turning of brute matter into which man, by force of will, was to inject meaning; and in order to have a sound will, to be unhampered in his high and difficult task, he must harden himself. "Be hard, O man!" counsels Zarathushtra, repeatedly. "Turn all that is into the material of thought. . . . Impose your will and your standards upon the flux of growth (*des Werdens*). . . . Not change in itself is your danger, O men, and the end of good and evil, O ye wise! but that will itself, the will to power—the uncreate, productive Life-will!"

And in the same speech Zarathushtra adds: "He shall be bidden who cannot obey himself. That is the way of life. . . . Ordering is more difficult than obeying. Not only because the commander bears the burden of all the obedient and the burden easily becomes overwhelming, but because in every order there is daring and risk. And every time a man gives an order he risks his life. Yes, even when he commands himself; even then he must bear the results of his own command. He must be judge and avenger and sacrifice of his own law."

Why is this so? he then stops to ask. Why when there are so many dangers to brave will a man dare to command? And he adds: "Ponder well my reply, for I have crept into the heart of life itself and seen to the very roots of its heart."

"Wherever there is life there is the will to power. And

even in the heart of the servant is the will to be master.”

“ This secret Life whispered to me: I am that which must constantly conquer itself.”

But to Nietzsche the conquest of self never took the form of renunciation and submission. These virtues he saw only as maladies and sicknesses, while growth and victory meant ever new daring, the facing of greater dangers; the invitation to change and growth to arrive and be overcome; to submit to the new valuations set by man and to become subject to his mastery. “ He only who changes can remain related to me,” he says with Emerson; and joined to this statement comes that mystical utterance: “ I am not of those who can be asked ‘ why?’ Was I born yesterday? It is long, long ago that I experienced the reason for my opinions. I should be no more than a vessel for memories if I carried my reasons about with me.”

It is unnecessary to point out how alien is Nietzsche’s whole attitude of mind to the American temper. He abhorred commercialism, humanitarianism, facile optimism, any form of casual, easy-going light-heartedness. The very foundation of his philosophy was to admit an evil world; to make no such slim excuses for it as that it was the best of all possible worlds while most things in it were necessary evils. On the contrary, he desired to impress the fact that it was an evil world because men, the sole creators of values and of significance, had failed to make it and themselves better.

One point in Nietzsche’s personal history forms a parallel to Whitman’s. During the Franco-Prussian War he became a volunteer nurse. Doubtless much of the doctrine of ruthless strength, and the need of hardness and invulnerability, grew out of his terrible suffering at the sights he saw when he crossed conquered Alsace, when he saw the misery and destruction of Weissenburg, Wörth, and Strasburg, and the inconceivable horrors of Metz, literally one great hospital for the wounded and suffering. Out of a like experience during the Civil War in our own land Whitman drew his sense of the solidarity of life, the doctrine of love as a solution of life’s ills, a love which identifies each man’s fate with that of all his kind. From the same experience Nietzsche emerged with his doctrine that the only way to

bear the horror of life was to be so hard that one could stand the downfall of part of humanity for the sake of the victory of the few, the chosen men of strong will. The truth is he was too thin-skinned, too sensitive, to stand life. Like Whitman, he began to envy the animals. Is it not amusing that both these writers should at the same time have expressed in almost identical language their envy of the animals, who do not lie awake at night and think of their sins, who are not possessed with the mania of owning things? Nietzsche looks forward to the time when philosophers shall be "laughing lions"; when the dangers of life shall not cause them a qualm and its eternal flux shall be received with joy. In his desire to see man strong, coping energetically with life, he stood for war as against peace and ease, for aristocracies as against the rulings of the people, for individualism as against socialism, for positive joy of living as against acceptance of pain.

He looked upon art as the means whereby men released themselves from the more sordid limitations of life. The Dionysian spirit in his earlier writings represented not only the creative energy of man, but that ecstasy of contemplation in which personality was temporarily dissolved and became one with the whole; a temporary victory of the "All" over the limited. Life consisted then in a constant interplay of the Dionysian and Apollonian spirits. It is only fair to add that Nietzsche always names these illusions—the two illusions whereby life may be made to appear desirable. The Dionysian illusion is that in which man, by contemplative ecstasy, becomes a creative energy; the Apollonian illusion actually makes forms in formless space, draws lines and lures beauty into shape. The world regarded as a work of art is, then, the Apollonian illusion. It teaches men to desire life, because life is an unbroken chase after beauty. When we are possessed by the desire of beauty, we call life back again and again because the pursuit is worth while. On the other hand, when man ceases to feel himself a separate, single being, ceases to realize his limited, fragmentary self, but feels himself instead as a breath of the eternal wind of will that sweeps through the spheres of the infinite, he becomes by virtue of his relations and conceptions indestructible and eternal. Man escapes thus the terrifying spectacle of death; he escapes pessimism, he loses his suffering in the contemplation of the eternity of will

beneath the perpetual flux of life. Then, again, he is strong enough to recall life over and over, because he rejoices in its grandeur. Thus life was to be made bearable, not by making it easier or by diminishing the sum of suffering, but by enlarging our conceptions of life, by conceiving it as more intense, more grandiose, more imposingly beautiful. "All that is good," he says, "helps me to be productive. I have no other proof of what is good." It was, then, through the constant interplay of the two illusions, the Dionysian and the Apollonian, the active productive principle and the restraint of the rules of art constantly outlining energy that life was to be made worthy. If it is true that when art draws lines mysticism rubs them out, it is only to enlarge the concepts somewhat around which art draws. Wherever contemplation erases the boundary lines, art returns to her task and works again on a larger scale in wider spheres. And to this contest there is no end. Dionysius, the life principle, continually produces, and Apollo finds form a structure for each new concept. "Make life," he might have said in contradiction to the teachings of the two great religions. "Make life; do not renounce it." It was suffering and compliance and a broken spirit, thought Nietzsche, which had finally consoled itself with inventing a heaven and a hereafter in which to store its joys. It was a wholesome instinct of Nietzsche's to draw back attention to the present moment and to insist upon that present moment as the only foundation for a repetition of beauty and strength. "Man is a bridge and a goal," he says in one place; and, again, "Man is a transit and an exit." What Nietzsche aimed at doing was to get rid of the idea of an absolute good and evil and to substitute an immediate sense of good and bad, pleasant and unpleasant, worth while or unworthy. The essence of Christian morality he mistook to be the desire of the individual to save his soul; and thus boldly stated, this seems a most ignoble aim. It is only when one realizes that what that meant was that each individual should strive to subject his lower nature to his higher in the interests of all that one sees that our western religion and our Teutonic philosopher were really aiming at one and the same mark: to make of man "an arrow and an aspiration after superman." Again, Nietzsche objected to shifting the burden of improving life upon God or upon evolution. Man by deliberate choice and by imposing his will was to create

values and affirm a worthy life. This is the meaning of his proclamation in *Zarathushtra*: "God is dead. Now, men," he calls, "it is your time to make an effort; to create worth for life, since there is no outside help. The very roots of good and evil are in your own hearts; they are not in life, in chance, in luck, or in a hereafter." The proclamation is amazingly like one made long before: "The Kingdom of Heaven is within you."

Of woman and marriage Nietzsche has said a great deal; most of it is unpardonably stupid as coming from a brilliant thinker; much of it is self-contradictory, but then Nietzsche announces: "The world is large enough to contain all contradictions." One must remember, however, that while a great deal that he said is cryptic and mystical and sheer foolishness, it was, after all, Nietzsche who said: "The perfect woman is a higher type than the perfect man and a much rarer." One would like to ask here what becomes of his theory that the highest type is always that of the fighter, the conqueror, the one who imposes will, while all Nietzsche's other ideas of woman are purely Paulistic and Miltonic. Again, he jeers at those who marry for any motive other than "inward necessity," and by this he means the most spiritual impulse, for he adds that marriage is only pardonable between those who have the most profound respect for each other and an unconquerable will shared by both to upbuild nobility of nature in each other and in their offspring, and to attain for themselves and their heirs the highest degree of self-development. "Marriage," he says, "is the name I give to the will of two to create that which shall be higher than its creators." If in other places he has spoken cynically and slightingly of women, it was of those "who have no insides, but are only masks." "The man is to be pitied who is caught by such ghosts. Such women often know how to lure man, and he seeks and seeks for a soul and shall go on seeking." Here again we find Nietzsche illogical and superficial. There has never been a profound thinker who carried sex distinction below the surface of life; the soul is sexless. And there is not a word Nietzsche has uttered of women that might not be just as well applied to men.

In form Nietzsche has the identical virtues and flaws that we find in his thought. His work is all in the form of the personal confession. Each book was a fresh attempt to ex-

plain himself, to give his experience and the resultant attitude toward life. Although he succeeded best in that wonderful poem, "*Zarathushtra*," it needs all his other volumes to throw light upon that cryptic, lyrical utterance. If one except the three essays which make up the volume called the *Genealogy of Morals*, all his books are written in the form of detached fragments or aphorisms. "What others say in a book," he says, "I press into a sentence—the form of Eternity." The truth is, Nietzsche thought in sudden flashes and only at broken intervals. Fluidity of thought, power of concentration, the patient unfolding and upbuilding of his thought were impossible to him. He lacked just that constructive power, that ἀρχιτεκτονική which is the mark of the profoundest thinkers. The aphorism is the prose form of the lyric, embodying individual and subjective feeling. Appealing as it is, it is never as impressive and imposing as an epic or dramatic form which embodies the universal and the objective. Nietzsche is mistaken when he says, "The affirmation makes a more powerful impression than argument." It merely makes a quicker and a lighter impression. It is easily overthrown by reflection. In confining himself to this form, unless, indeed, Nietzsche was confined to it by the very quality of his mind and his inherent limitations, he overlooked the misunderstandings that arise from receiving a whole system of philosophy in broken-off bits. He is known as a fanatical antichrist and a ruthless iconoclast. Yet many of his profoundest utterances are mere echoes, as I have shown in one case of the sayings of Christ. His own mystical theory of Dionysian ecstasy he himself denied in his later work, labeling it as belonging to his "mystical period" and proclaimed it no more than a lovely but worthless illusion. "There are moments," he says, "when we must rest from ourselves; see ourselves from above and below and around, so that we can laugh at and weep over ourselves from the outside." And this was ultimately, in a new contradiction, the only value that he gave to art, that it should by selection so raise the main and significant features of life that the mean and the sordid could be overlooked. Thus, as a result of his fragmentary method, instead of one well-built theory of art (and only the superficial reader will fail to see the underlying unity in the two statements of the functions of art) we have two broken fragments, apparently mutually destructive.

The form of Nietzsche's discourse was undoubtedly the result of his broken health. He was a terrible sufferer all his life. He was timid, supersensitive, profoundly wounded by life. His almost hysterical scream for health, for strength, for hardness, was as touching a personal confession of his sufferings as Job's denials. His yearning for aristocratic seclusion was the result of his endless difficulty in dominating his surroundings, his inability to withdraw himself from a humanity that obtruded itself and wounded him at every turn. But, like the Christian Scientists, he concentrated his whole thought upon hardness, upon strength, upon lofty, if lonely, aspirations. And not only does his face, in successive portraits, become more energetic, more domineering, but, despite the long torment of physical suffering, it gains in strength, in the expression of victory. When finally, at the tragic end, his mind gave way, and the final hold upon coherent thought loosened, it was a sense of victory that haunted his madness. He wrote to Brandes:

"Since you have discovered me, it is not wonderful to find me: what is difficult now is to lose me—the Crucified."

To another friend the letter ran: "Sing me a new song. The world is clear and all the skies rejoice." While to Burckhardt what he wrote was in the form of a strange and mad hint at the doctrine of cosmic consciousness, that sense common to all great seers of the identity of all men, all experience: "I am Ferdinand de Lesseps," he wrote, "I am Prado, I am Chambige (two notorious assassins of the moment). I have been buried twice this autumn."

After this there came the pitiful ten years of twilight when Nietzsche lived innocent and harmless, but without memory, without coherent thought. In one of his last letters he wrote: "I have written such beautiful books. How should I not be grateful to life?" And in the last few years when books were handed to him he would ask, gropingly, "Have I not written books, too—good books—long ago?"

He died in 1900, and whatever we may find to refute in his books and his doctrines, they remain excellent tonics for weak souls. Many poisons are in his medicines, but, to stick to the analogy, the poisons in measured doses brace the system. He urged man to accept the responsibility of himself, to shoulder his burden, to grow strong, aye, to grow tough by bearing it and to find himself each day standing

higher than yesterday, with his foot raised for the new step to-morrow.

The strong man may be less conscious of his strength than the struggling invalid. The great religions that Nietzsche attacked took for granted man's love of life, man's strength not only to live, but to give; but Nietzsche was a sufferer, a hopeless invalid, cheering and bracing and exhorting the weak and the sick. It is immensely to his credit to have conquered pessimism and to have conceived of a life whose joys were so great that its pains might be recalled. One constantly hears another say, "I should like to live my life over, knowing what I know now," and in so saying the speaker thinks to escape the pains that he unwittingly invited. Nietzsche knew that great joys are joined to great pains, and all he asked was that neither joys nor pains should be mean and sordid. Do you remember the "*Round-Song of Zarathushtra*"?

"O man! Listen!  
What does the deep midnight say?  
I slept—I slept—  
And I awakened from a deep dream.  
The world is deep,  
Deeper than daylight knows.  
Pain is deep—  
And joy deeper than heart's sorrow.  
Pain speaks: Pass on!  
But Joy demands eternal return,  
Demands the deep endlessness of Infinity."

LOUISE COLLIER WILLCOX.

# A NEW SOURCE OF THE "DIVINA COMMEDIA"

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STUDENTS of Dante are awaiting eagerly and not without trepidation two volumes which Professor Paolo Amaducci, of Rovigo, promises to publish this fall, and of which there has already been printed in Italy a synopsis taken from a long communication addressed by the author to the Regia Deputazione di Storia Patria for the province of Romagna at its session in Bologna on March 26th. We are awaiting it with trepidation, because Professor Amaducci asserts that as a result of it all the commentaries on the "*Divina Commedia*" will have to be revised, being "in large part either insufficient or erroneous or vain," their authors not having recognized the source from which Dante derived the scheme of his trilogy and which is the real key to its allegorical interpretation.

This source, according to Professor Amaducci, was opusculum XXXII of St. Peter Damian, entitled: "*De quadragesima et quadraginta duabus Hebraeorum mansionibus*," in which the saint interprets allegorically the forty-two stopping-places of the Children of Israel in their journey to the Promised Land.

Professor Amaducci's theory may be stated briefly as follows: That Dante's journey, from its beginning in the dark wood to its end in the Empyrean, is an image of the journey of the Children of Israel, from the exodus from Egypt to the arrival at the Promised Land; that the hundred cantos of the "*Divina Commedia*," to be properly understood, must be divided into forty-two marches and stopping-places ("mansions") as was the journey of the Israelites; each march and resting-place having the same allegorical

meaning that St. Peter Damian attributes to those of the Israelites.

A synopsis already published in *Il Giornale Dantesco*, of Florence, reveals an extraordinary parallel between the work of Dante and that of St. Peter Damian, sufficient, indeed, to make out a strong case for the Rovigo professor, but a thorough study of the book itself will be necessary before it will be possible to accept his theory in its entirety.

St. Peter Damian was born at Ravenna in 1007 and died at Faenza in 1072. He was the trusted counselor of several Popes, both as legate to foreign courts and bishop of a diocese (Ostia), but especially as a reformer of ecclesiastical abuses. He was the bitterest foe of simony and of the married clergy. The only churchman of his century who can be compared with him was Hildebrand. Cardinal Capece-latro says of him:

"Damian might almost be called the precursor of Gregory VII; greater in mind, more vigorous and more austere against the powerful, he was deputed to sanctify the Church with the efficacy of his words. He maintained a terrific fight against its internal corruption; his stern meditative spirit made itself manifest in the struggle he waged to free it from passion and vice. This was a noble, lofty, and unparalleled struggle for religious liberty."

And Francesco d'Ovidio remarks of him:

"Hermit, bishop, and cardinal, he had but one cry in all his life. And this was the outcry of Christian virtue against the simony and incontinence with which clergy and laity had besmirched themselves; he lived only to thunder terribly against these sins."

And, speaking of him as a writer, d'Ovidio says:

"The monk of Avellana was truly a miracle of learning. . . . As a theologian Peter Damian is supremely biblical; for in his knowledge of that divine book, and in the art of making it serve the truths defined by the Church, he is not inferior to any of the greatest Fathers of the Fourth and Fifth Centuries. In this respect he may well stand beside Augustine, Gregory, Chrysostom, but more especially does he resemble Saint Jerome."

Professor Amaducci is by no means the first critic to point to St. Peter Damian as a source of inspiration to Dante. In fact, he says that he was drawn to study the works of the saint by reading the words of d'Ovidio in *Studi sulla Divina Commedia* and a passage in *Storia di S. Pier Damiano e del suo tempo*, by Cardinal Alfonso Capecelatro. The latter passage may be translated as follows:

"He who would collect all the visions recounted by St. Peter Damian on the faith of his friends and disciples might find almost all the sins that are specifically punished in the '*Inferno*.' The divine poet of Alighieri, which is a continuous vision, has points of similarity with many books of the Middle Ages, but especially with this of our saint."

D'Ovidio's comment is contained in his remarks on canto XXI of the "*Paradiso*," of which St. Peter Damian is the protagonist. He says:

"It might be well to seek out if there be not some connection between that which Damian is made to inculcate in respect to predestination and that which he actually taught in his writings. Happy the man who may have the leisure to make such research and to dig out how many reminiscences of the ideas of the monk of Fonte Avellana may possibly be hiding both in the poem and in the other works of Dante. . . . It would be a splendid thing if others might make a minute comparison between his works and those of Alighieri."

And Villemain, the great French authority on medieval literature, held that the primitive germ of the "*Divina Commedia*" was St. Peter Damian's written account of a vision related by his great disciple, Hildebrand, afterward Pope Gregory VII, in the Cathedral at Arezzo in the presence of Pope Nicholas II. This vision was as follows:

"In the land of Germany a certain count, rich, quite powerful, and—what in this class of men is a miracle to find—of good report and decent life (according to the judgment of the people), died about ten years ago. He being dead, a religious man descended in spirit into Hell and saw this count placed upon the uppermost rung of a ladder. And he said that he had seen this ladder erect among the roaring and avenging flames of a crackling fire, and that it was placed there to receive all the descendants of that count's family. And the spot from which that ladder issued forth was an obscure chaos, a vast abyss with an infinitely wide mouth, and very deep. Upon this the line of the count's descendants was arranged in such a manner that when a new one of them arrived he must occupy the topmost rung of the ladder, and he who was already there, and all the others with him, must descend to the rung immediately below. And so also for the others of the same family: as soon as they arrived after death at the said ladder, those who were there already, leaving at once their places, went lower down, through the impelling force of inexorable judgment. Then that man to whom it was given to see this asked the cause of such horrible damnation, and especially why that count, who had lived in his own day, was punished, although he had been so just, so good, and such an honorable man; and he heard it said: That this came to pass because one of his ancestors had robbed from the blessed Stephen a farm belonging to the Church of Metz; that this was his latest successor, and that the others had been punished in the same way. As one same sin of avarice had united them all in one same crime, so one same punishment was uniting them to suffer the pains of one atrocious fire."

D'Ovidio considered Villemain's deduction from this to be too sweeping, but he recognized that it was impossible to deny that from this passage Dante probably derived his idea of the punishment of those guilty of simony. It will be remembered that when he found the spirit of Pope Nicholas III head downward in a pit, with his feet ablaze, this pontiff said to him:

“Di sotto al capo mio son gli altri tratti,  
che precedetter me simoneggiando,  
per le fessure della pietra piatti.  
Laggiu' caschero' io altresì, quando  
verra' colui eh' io credea che tu fossi.”  
—(*Inf. XIX*, 73-77.)

It was such suggestions as these that made Professor Amaducci determine to dig more deeply into the now almost unread works of St. Peter Damian, a native of Bologna, where Dante found his last refuge, and where he probably wrote that canto XXI of the “*Paradiso*” in which he makes the saint greet him so affectionately:

“Equel lume che presso piu' ci si ritenne  
si fe' sì' chiaro, ch' io dicea pensando:  
Io veggio ben l'amor che tu m' accenne.”  
—(*Par. XXI*, 43-45.)

Opusculum XXXII, in which Professor Amaducci believes he found the key to the “*Divina Commedia*,” is addressed by St. Peter Damian to Hildebrand, the future Gregory VII, and its occasion is the habit of a certain monk to abstain from meat for forty days at times others than those in which such abstinence is prescribed by the Church. The saintly author collects biblical references to the number of forty and its mysteries, and then, symbolically interpreting the forty-two places in which the Israelites sojourned in the course of their forty years of wandering on the way to the Promised Land, he demonstrates in the mystical scholastic manner of his day that the allegorical meaning of this journey is the path of life of the Christian man, who arrives at real perfection and bliss by passing, as it were, through a like number of steps or grades of virtue.

The saint's words are as follows:

“He who on his journey follows the measure of the number forty hastens on with the Hebrews after leaving Egypt to the fatherland. With this number, in fact, the children of Israel entered into the Promised Land. And oh, the height and the depth of this marvelous mystery! Since retracing

that same sacramental line with which God presented Himself to man, man returned to his Creator. For in truth, forty-two are the mansions of the Children of Israel in the exodus from Egypt, and forty-two are the generations through which was derived the coming of Christ the Saviour into the world. For this number by which the Lord descended into the lowest depth of this Egypt is that by which the people of Israel ascended to the Promised Land. He came down that these might rise. He took upon Himself the form of a servant that these, set free, might emerge from the prison of servitude. Which was carefully confirmed by Moses when he said: 'The sons of Israel rose up in their might.' And what else is the might of the elect if not Christ, who is the power of God? Yet he who rises, rises with Him who descended among us not from necessity, but from condescension, that there might be no doubt of the truth of the words of the apostle: 'He that descended is the same also that ascended above all the heavens that He might fulfil all things.'"

The saint says that all the story of the wanderings in the desert, as contained in *Numbers XXXIII*, is

"entirely accomplished within us by virtue of a mysterious spiritual signification. For that which then took place visibly is spiritually applicable to us. For it is we who issue forth from the furnace of Egyptian slavery and strive to enter the Promised Land, passing through many resting-places, that is, traversing the divers upward steps of virtue. But, forasmuch as the Fathers, except those of the tribe of Levi, were left dead in the desert and only their children reached the Land of Promise, so it is expedient that the old man within us die and that the new man, created in the image of God, put on strength to attain the land of the living. Therefore, whosoever desires to realize the promises made to the Fathers must not have solicitude to possess with the tribe of Levi the rope of heredity on earth. For he who grovels upon the earth for the things of the earth, he who, when the Passover is to be celebrated in bitterness and the journey is to be made with swiftmess, lingers awhile to enjoy, saying: 'Soul, thou hast much goods laid up for many years, take thy rest, eat, drink, and be merry,' truly deserves to hear the words: 'Thou fool, this night shall thy soul be required of thee, then whose shall those things be which thou hast provided?'"

And much more to the same effect, for those fathers of the Middle Ages were prone to find a mystical spiritual meaning in all sacred history.

St. Peter Damian goes on to elaborate his parallel between the forty-two stopping-places of the Israelites and the forty-two generations of Christ from Abraham to the Blessed Virgin Mary. This gives him further opportunity to describe the way of the righteous man from sin to salvation, ascending the mystical path from earth to heaven which Christ descended from heaven to earth:

"We begin our path at the parturition of the Virgin, in order that, traveling on by the successive sites of the 'mansions,' we may arrive at last at

God, who is our Supreme Father. Therefore, as we desire to issue forth from Egypt, let the parturition of the Virgin first be presented to us; that is to say, believing that the word of God made flesh come into the world, all perishable and transitory things abandoned, we repose in Him and place in Him the habitation of our peace and hope. After which, studying to improve and to climb up by the steps of faith and virtue, we must tarry such time in each of these as may be necessary to convert virtue into habit."

It is remarked that in his letter to Can Grande della Scala, Dante wrote (paragraph seven) as follows:

"It is to be known that the meaning of this work (the '*Divina Commedia*') is not simple, but rather it may be called '*polisemum*' (or '*polisensuum*'), which is as much as to say of several meanings; for one is its sense from the letter, another is that which it has from the things signified by the letter. The first is called literal, the second allegorical or moral. That this matter of operating may the better be explained it may be considered in these words: 'When Israel went out of Egypt and the house of Jacob from a barbarous people, Judea was made his sanctuary, Israel his dominion.' Forasmuch as if we look only at the letter we see there signified the exodus of the children of Israel from Egypt in the time of Moses; if at the allegorical, we see signified our redemption worked by Jesus Christ; if at the moral sense we discover the conversion of the soul from the weeping and misery of sin to the state of grace; if at the mystical (*anagogicum*), we recognize the passage of the sanctified soul from the slavery of present corruption to the liberty of eternal glory. And although these mystical senses may be distinguished by various names, all may in a general way be called allegorical, forasmuch as they are diverse from the literal or historical."

In "*Il Convito*," tratt. II, cap. 1, Dante also says that writings must be understood in four senses—the literal, the allegorical, the moral, and the mystical—and he illustrates the latter with the words:

"as may be seen in that song of the prophet who says that in the exodus of the people of Israel from Egypt Judea is made holy and free. For this being manifestly true as to the letter, no less true is that which is spiritually intended, which is that in the exodus of the soul from sin it is made holy and free in its dominion."

These words might almost have been written by Damian. It is scarcely imaginable that they were not suggested by reading this opusculum XXXII.

To arrive at the allegorical and other meanings of the forty-two "mansions" of the Israelites, St. Peter Damian analyzes the meaning of their Hebrew names. How accurately he translates them is neither here nor there, for Dante would not have sought to verify the translations, but would have accepted them "literally, allegorically, morally, and mystically." There is no evidence that Dante knew

Hebrew, and, even if he did, it would not have mattered, as the monk's interpretations were sufficient for his purpose.

The treatise of Damian closes with an exhortation to Hildebrand to make a more profound study of these mysteries. But Hildebrand became Pope before he was able to take up the task, and he was kept so busy curbing the pretensions of Emperor Henry IV that he never carried out the task imposed by his master. This task, if Professor Amaducci is correct, was taken up and accomplished by Dante Alighieri, the "*Divina Commedia*" being the result.

Professor Amaducci has spent many years in analyzing the "*Divina Commedia*" in the light of St. Peter Damian's interpretations of the forty-two "mansions," and has divided its hundred cantos into forty-two sections, each of which, according to him, corresponds to one of St. Peter Damian's "mansions," and has the same mystical or allegorical significations.

From the synopsis that appears in *Il Giornale Dantesco*, it seems that he puts forth this division tentatively, for he says this "*ponderoso tema*" is too great for one man, and asks that others correct where he may have erred, add where he may have omitted, cut out where he may have been superabundant.

With the synopsis referred to as a guide, I have prepared a table giving on one side the names of the forty-two stopping-places or "mansions" of the Children of Israel, with their interpretation by St. Peter Damian, and on the other side a synopsis of the passages in the "*Divina Commedia*" which Professor Amaducci believes to correspond. The spelling of the Hebrew names is that to be found in most of the editions of the saint's works and is that adopted by Professor Amaducci.

1. RAMESE: "commotion of a troubled mind," or, "commotion aroused by a worm," or "commotion aroused by thunderclaps."

Inf. I, 1-9: Lost in the dark forest.

2. SOCHOT: "tabernacles" (tents or pavilions).

Inf. I, 22-28: His mind turns back to look upon the perilous path by which he had come.

3. ETHAN: "strength"; or, BUTHAN: "valley."

Inf. I, 28-30: After a brief rest he resumes his march.

4. PHIAIROTH: "speech of the nobles," or, "word of the learned"; OSIRAATH: "entrance to the sub-

Inf. I, 13-21: Frightened, he notices the hill touched with the rays of the sun and takes courage

urb," or, "beginning of a new conservation"; BEELSEPHON: "ascent of the observatory or of the tower," or, "Lord of the North Wind"; MAGDALO: "magnificence."

5. MARA: "bitterness."

6. ELIM: where there were twelve springs of water and seventy palm-trees: "rams."

7. Beside the Red Sea.

8. In the Desert of Sin: "place full of briers," or, "temptation."

9. DEPHTCA: "a knocking"; or RAPHACA: "health."

10. HALUS: "fatigues," or "ferment."

11. RAPHDIN: "praises of judgment."

12. In the Desert of Sinai.

13. CHIBROT-TAAVA: (the sepulchers of concupiscence).

14. ASEROTH: "atria or vestibules of perfection," or, "beatitude."

15. RETHMA: "vision fulfilled"; or, PHARAM: "mouth unveiled."

16. REMON PHARES: "sublime

to proceed; v. I, 31-136: Encounter with the three wild beasts; the spirit of Virgil comes to his aid; tells him of the way of salvation; prophesies the coming of the "veltro"; promises to guide him through Hell and Purgatory.

Inf. II, 1-42: Dante's discouragement and fear of inability to perform the journey.

Inf. II, 43-120: Virgil tells him he has been sent by Beatrice, she being urged to go down to Hell for him by two other women who are in Heaven.

Inf. II, 121-142: Close of Virgil's words; Dante's spirits revive; his thanks; they start on the journey.

Inf. III, 1-18: Inscription over the Gate of Hell; Virgil tells him they have reached the place where he shall see the *genti dolorose*.

Inf. III, 19-21: Holding Virgil's hand, they enter.

Inf. III, 22-69: The indolent, incapable of good or evil, condemned forever to be chased by wasps and to follow a moving banner.

Inf. III, 70-129: They cross Acheron in Charon's skiff after Virgil tells Charon this is willed in Heaven; Virgil says Charon's wrath is a presage of Dante's salvation.

Inf. III, 130-136: Thunder and he falls as if asleep. Inf. IV, 1-6: Awakened by thunder, he rises and looks about him to see the place.

Inf. IV, 7 to end of Canto XXXIV; the punishments of the wicked in Hell.

Purg. Cantos I-XXVII: Passage through Purgatory as far as the entrance to the terrestrial Paradise.

Purg. XXVIII, 1-84: At the river Lethe; Mathilda. Purg. XXIX: The mystical procession. Purg. XXX, 1-33: Appearance of Beatrice. Purg. XXXI, 89-145: Beatrice unveiled.

Purg. XXXII, 37-160: The mys-

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cleaving"; or, "division of the pomegranate."

17. LEBNA: "brilliant whiteness," or, "brick."

18. RESSA: "restraints," or, "visible, that is, salutary temptation."

19. CEELATHA: "church," or, "pre-eminence of the rod."

20. SEPHER: "trumpet blasts."

21. CHARADATH: "inherent effect or suitable deed."

22. MACELOT: "from the beginning," or, "union" (*conventus*).

tical tree; Beatrice, sitting upon its roots, tells him to write what he has seen. The eagle breaks the tree; the dragon seizes the chariot; the prostitute and the giant; Purg. XXXIII, 34-66: Beatrice's prediction that God will avenge the despoiling of the Church; and v. 106-145: The sweet waters of Eunoë.

Par. II, 22-36: Arrival in the first Heaven (moon). Par. III, 10-30: Spirits of those who neglected vows. Par. IV, 28-48: Beatrice explains that the spirits dwell in highest Heaven, but may appear in any.

Par. III, 34-63: Piccarda Donati. D. asks her if the blessed are not sometimes sad with longing to see other friends. v. 97-123: Piccarda tells how she was taken out of a convent and married; she points out the Empress Costanza. Par. IV, 64-87: Beatrice explains that these souls erred in not returning to the convent as soon as it was in their power so to do.

Par. IV, 136-V, 84: Beatrice's explanation of the free will to take vows or not; their sanctity and indissolubility when made; the right of the Church to change their material.

Par. V, 100-120: Appearance of the souls in the second Heaven (Mercury). Par. VI and VII, 1-9: Justinian; the story of the Roman Empire.

Par. VII, 19-148: B. says the death of Christ was just in that He was a man, a sacrilege in that He was God; that this was the only way in which man could be redeemed; that the soul must be incorruptible and the resurrection of the body necessary.

Par. VIII, 13-39: Third Heaven (Venus); souls who on earth burned with charity burn here with celestial love. v. 85-148: Charles Martel explains how God makes the stars influence men so that they are differ-

23. THAHATH: "patience," or, "confirmation," or, "fear."

24. THARE: "ecstasy," or, "astuteness," or, "malice."

25. METHICA: "new death"; or, MAATHICA: "sweetness."

26. HESMONA: "haste," or, "firmness and constancy."

27. MOSEROTH: "He who is accepted"; or, "bonds."

28. BANAEIM: "springs," or, "cultivations," or, "sons of necessity."

29. GADGAD: "Messenger," or, "in war order," or "doubts and uncertainty."

ent from their progenitors. Par. IX, 127-142: Folco di Marsiglia says that Florence, by coining the florin, has spoiled the clergy, making them avaricious.

Par. X, 1-27: The creation and the wonderful architecture of the universe, as illustrated by the two opposed heavenly movements.

Par. X, 49-90: The blessed in the fourth Heaven (Sun); D. thanks God with such fervor that for a moment he forgets Beatrice; the doctors of the Church sing and dance about them. Par. XI, 1-12: D. looks at the earth and deplores that men run after fleeting vanities and neglect things real and eternal.

Par. XI, 28-42: St. Thomas Aquinas speaks of the two great champions of the Church, St. Francis and St. Dominic.

Par. XI, 43-132: St. Thomas tells the life of St. Francis and denounces the degeneracy of the Dominicans. Par. XII, 46-120: St. Bonaventure tells of the life of St. Dominic and deplores the degeneracy of the Franciscans.

Par. XII, 121-145: St. Bonaventure names himself and the other blessed Franciscans.

Par. XIII, 34-142: St. Thomas Aquinas discourses on the comparative wisdom of Solomon, Christ, and Adam; the danger of rash judgments.

Par. XIV, 97-126: The cross of Mars. Par. XV, 13-30, 49-69, 88-148: Greeting of Cacciaguida; his talk of D.'s family. Par. XVII, 46-142: Cacciaguida's prophecy of D.'s exile and Can Grande's hospitality. He tells D. to write courageously the truth about what he has seen. Par. XVIII, 37-51: Spirits of Joshua, Judas Maccabeus, Charlemagne, Roland, William of Orange, Rainouart, Godfrey de Bouillon, and Robert Guiscard.

## SOURCE OF THE "DIVINA COMMEDIA" 785

30. IETEBATHA: "Kindness," or, "good." Par. XVIII, 70-136: Sixth Heaven: those who ruled in justice group themselves into semblance of the imperial eagle; invective against Papal avarice. Par. XIX, 70-99: The eagle solves D.'s doubt about the justice of God to the heathen. Par. XX, 130-141, and says that predestination is an abyss unfathomable to mortal eyes.
31. EBRONA: "transit or passage." Par. XXI, 1-18: Ascent to seventh Heaven (Saturn); Beatrice explains why she smiles no more, as D. could not look upon her smile and live; v. 25-42: Jacob's ladder.
32. ASIONGABER: "the counsels of a man." Par. XXI, 52-142: St. Peter Damian explains the incomprehensibility of predestination. Par. XXII, 1-12: The cry of the blessed disturbs D.; v. 52-69: St. Benedict refuses to show himself in his own form. (This and the previous "mansion" are the heaven of Saturn, in which are the contemplative spirits. D.'s every wish is disappointed, as if, as Scartazzini comments, to make him appreciate the difference between the blessed and mortals.)
33. SIN, where is CADES "temptation," or, "holy fructification." Par. XXII, 37-99: St. Benedict talks of contemplative spirits and Jacob's ladder, and regrets that men no more try to climb to Heaven by this route.
34. HOR: "mountainous." Par. XXII, 100-154: D. and Beatrice ascend Jacob's ladder to the eighth heaven (stars); D. turns to view the solar system. How small is the earth in comparison with other heavenly bodies! Par. XXIII, 1-21: Beatrice stands waiting; she says, "Behold the triumph of Christ."
35. SALMONA: "shadow of the portion," or, "little image." Par. XXIII, 25-139: The triumph of Christ; the coronation of Mary and her ascent to the empyrean.
36. PHINON: "mouth," or, "parsimony of the mouth" (that is, parsimony of speech). Par. XXIV, 34-154: St. Peter examines D. on Faith. Par. XXV, 13-114: St. James examines D. on Hope. Par. XXVI, 7-69: St. John examines D. on Charity.

37. OBOTH: "magicians," or, "pythons."

38. GEBARIM: "piles of stones passing by," or, GAI: "chaos or abyss."

39. DIBONGAD: "apiary of temptations."

40. HELMONDEBLATHAIM: "contempt for figs," or, "contempt for reproach."

41. ABARIM OVER AGAINST NEBO: "transit," or "separation."

42. "In the land of Moab near Jordan, before Jericho."

Par. XXVII, 10-66: St. Peter's invective against corruption of Popes and clergy.

Par. XXVII, 97-148: Ascent to ninth or crystalline heaven, whence all things move; man does not understand because turned away by earthly things. Par. XXVIII, 16-42: God in the aspect of a point; nine circles of angels whirl around Him; v. 88-129: Circles sparkle and cry Hosanna!

Par. XXIX, 70-108: Beatrice says the doctors are wrong in saying that angels have understanding, will, and memory; mortals excite anger of Heaven in subjecting scriptures to human philosophy and thus wrongly interpreting them.

Par. XXIX, 109-126: Invective against vain preachers.

Par. XXX, 1-45: The empyrean, where there is neither motion nor time, but only light and love.

Par. XXX, 46-132: The river of divine light; the celestial rose; Par. XXXI, 1-18: The celestial rose. v. 79-93: Adieu to Beatrice. Par. XXXIII, 1-39: St. Bernard's sublime prayer to the blessed Virgin Mary.

I confess that at first sight the relationship between the passage of the "*Divina Commedia*" and the mystical or allegorical meaning of the "mansion" to which Amaducci assigns it, is in many cases not evident or even apparent. Here and there the connection is obvious, in, for instance, Nos. 1, 5, 13, 14, 15, and 32; but in many of the others, even a careful reading of the whole exposition by St. Peter Damian leaves an abyss that requires a stretch of the imagination to bridge. The saint's method of interpretation is well illustrated by two brief passages translated from the Latin. The first of these refers to "mansion" 33, and the second to "mansion" 39. I selected them because of their comparative brevity. This is the first:

"But forasmuch as he who imputes knowledge imputes grief, they come again into the desert of Sin, where is Cades. But Sin is interpreted

temptation, as we said above. For just as a hammer strikes repeatedly a golden or silver vessel, as a file repeatedly rubs it until it is polished, so repeated temptation, not yielded to but withstood, purges the mind of its coarseness. 'The furnace trieth the potter's vessels, and the trial of affliction just men' (*Ecclesiasticus XXVII*, 6). And as Cades is said to be 'holy fructification,' thou seest that holy fructification follows in the wake of temptation."

And the second is:

"Wherefore it follows aptly enough that after the chaos of the pythons and magicians, which is the dark cunning of the heretics, soon they arrive at Dibongad, which may be said to mean 'apiary of temptations.' For as bees make honey with their mouth, but prick with their sting, so also the heretics, who put forth manifestly blandishments with their words while they hide the stings of error as it were behind them; at first they distil sweetness with their mouth, but afterwards they sow broadcast the error of stinging falsity. Hence the Prophet lamented, saying: 'They swarmed about me like bees, and they burned like fire among thorns'. (*Psalm CXVII*)."

The process of reasoning by which Professor Amaducci identified the "mansion" spoken of in the last quotation with Beatrice's remarks against the teachers who excite the divine wrath by specious and false interpretations of the scripture, may perhaps be followed without difficulty; but why he confines the identification to Par. XXIX, 70-108, and assigns lines 109-126, which are a bitter invective against these same vain preachers, to "mansion" 40, Helmondeblathaim, meaning "contempt for figs" or "contempt for reproach," is not evident, even after a perusal of the full text of St. Peter Damian.

I cite the foregoing passages at random, but they are typical. I have compared the saint's opusculum XXXII with the "*Divina Commedia*" as carefully as was possible in the few weeks I have had at my disposal, and, although I see countless parallels, some of them almost paraphrases, I am not yet inclined to go so far as Amaducci and assert that Dante took up the task which Hildebrand was too busy to undertake, and that his work is derived in scheme and allegory from this one treatise of Damian's. That the latter influenced him and supplied him with many ideas there can be no doubt; but the same is true of St. Thomas Aquinas, Boetius, and, in fact, of a host of theologians and doctors of the Church. And there are several others of Damian's opuscula which undoubtedly furnished him with ideas, notably the *Liber Gomorrhianus*, opusc. VII; *Contra Intemperantes Clericos*, opusc. XVIII; and the visions and

miracles related in such works as opusc. XXIII and XXXIV.

I prefer the assertion of Carducci that "Dante was the voice of twelve Christian centuries," and again that "Dante, as it is the nature of truly great poets to represent and close a great past, was the Homer of this moment of civilization," the close of the Thirteenth Century.

However, it would be unfair to pass final judgment upon the conclusions of so eminent a Dante scholar as Amaducci, especially as he has been comparing these works for many years, before having his complete book, in which, it is to be presumed, he will elaborate the arguments upon which he bases his theory.

An article by Franco Sabelli in *Il Giornale Italiano* (New York) mentions also another forthcoming book on almost the same subject. This is by Mgr. Luigi Rocca, and is to be entitled *S. Damiano e Dante*. It would seem from Sabelli's article that Mgr. Rocca does not assert that Dante derived the "*Divina Commedia*" from any one work of his predecessor, but merely sets forth how much the poet owes to the saint. He cites many passages that are parallels in thought, and suggests that just as in matter of doctrine and pure theology Dante followed step by step the great doctors of the Church, especially St. Thomas Aquinas, so in the field of ecclesiastical discipline he tried as far as possible to follow the greatest reformers—of whom Damian was the chief.

Professor Amaducci writes me that his book is now on the presses. It is extremely unlikely that there will be any immediate acceptance of his theory by students of Dante, for no other author ever aroused such disputes as have raged around that poet; if Professor Amaducci's book lives up to his promises for it, it will undoubtedly start another tempest of criticism and counter-criticism. But the inevitable effect of this will be to stimulate a wider study of and interest in the works of this greatest of Latin poets and philosophers, whom Raphael in his painting, "The Disputa," placed among the doctors of the Church; who, "was the voice of twelve Christian centuries," and who has well been called "divine."

ARTHUR BENINGTON.

## NEW BOOKS REVIEWED

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REMINISCENCES OF THE GENEVA TRIBUNAL OF ARBITRATION, THE ALABAMA CLAIMS. BY FRANK WARREN HACKETT. Boston and New York: Houghton, Mifflin & Co., 1911.

As the secretary of one of the American counsel before the Geneva Tribunal, Mr. Hackett was present at all the sessions of that body and was thus daily associated with the eminent men who took part in its deliberations. It would have been better had he, in the present volume, confined himself to personal reminiscences, instead of fitfully passing from personal reminiscences to historical disquisitions, or the reverse. This might be overlooked had he shown a more impartial spirit in treating the graver aspects of his principal theme. Here the work leaves the impression of being a very smooth and plausible piece of special pleading. Patriotic ardor is forgivable even when pushed to the extreme, but the United States is now too powerful a nationality for its citizens to show a provincial partisanry in discussing international events in which their country has been involved. It is this tendency which causes Mr. Hackett to present in exaggerated colors England's attitude toward the North during the Civil War. Had he been writing in 1862 instead of in 1910, by which time the hottest passions should have cooled, he could not have expressed more emphatically his conviction that that attitude was as unfriendly as it was wicked.

In reality, England was not as unfriendly as the North, at the time, imagined. There was much to account for the suspicious soreness which the latter felt in that trying period. The most rigid neutrality would not have satisfied her people. They expected nothing less than such a degree of sympathy as would have amounted to active co-operation, simply because they were fighting for the preservation of free institutions. Did not the South represent slavery, and did not England detest that institution? Why, then, was she not willing to throw her whole moral weight against it by giving an enthusiastic support to the Northern cause? Why did she maintain what was at best a cold neutrality?

As a matter of fact, the whole of the lower and most of the middle class of England were warm partisans of the North; and this friendly sentiment was also shared by numerous influential noblemen. In vain the Emperor of the French tried to persuade the English Government to acknowledge the independence of the Confederate States. That Government refused, although the permanent rupture of the Union would have benefited England by throwing open the South to free trade. Recognition by the two Powers would have meant the triumph of the Confederacy, besides which the damage done by the *Alabama* and her sister-cruisers would have been a mere bagatelle. Certainly the South during the war never looked on England

as practically and substantially friendly to her interests, and this is the best proof that the English Government faithfully observed the principle of neutrality, whatever may have been the private sentiments of some of the distinguished citizens of England in favor of the Confederacy, a division of feeling to be expected in a country of such diverse interests and classes.

Mr. Hackett warmly defends the insertion of the indirect claims in the American case as submitted to the Tribunal. The fact is that their insertion was both a moral and a strategic blunder. The object of that case should never have been to reflect the acrimonious American opinion of the moment, which found its most unreasonable expression in these indirect claims. The only result was to jeopardize the Treaty of Washington, for the English Government declined to take up the argument on the direct claims until the pretension to the indirect was abandoned. It requires an extreme spirit of credulity to believe, with Mr. Hackett, that "what the United States expected and desired was a determinative judgment by the Tribunal that the indirect claims were not collectible." This would have been an anti-climax of a settlement indeed. The suggestion is quite too far-fetched ever to have had a substantial basis.

To such a degree was the bitter American feeling of the time reflected in the formal American case, as submitted to the Tribunal, that it cannot now be justified by any standard of diplomatic courtesy. What Mr. Hackett terms "plain Anglo-Saxon words" the British press unanimously characterized as "scurrility." It seemed to be the deliberate purpose of the draftsman to excite in the minds of the independent arbitrators a strong prejudice against England at the very start. It was as if he were drawing up a document to be filed in an ordinary American court, instead of one to be presented to a great international board. Naturally, the English Government in their counter-case refused to discuss the American charge of "hostile motives" and "insincere neutrality," because to do so "would have been inconsistent with the self-respect which every Government is bound to feel."

There is another point in Mr. Hackett's volume, in which his suave laudation seems to be open to criticism. With the exception of the illustrious Charles Francis Adams, the personnel of the Tribunal does not, at this late day, appear to deserve the highest encomium. Cockburn, the English member, was a man of brilliant talents, but he was also indiscreet, verbose, and flighty. Staempfli, the Swiss member, who had failed in business, seems to have been a sour Republican lawyer and journalist, whose sympathies were intuitively hostile to England. Sclopis, the Italian member, possessed ability and experience, but was a mouther of pompous phrases about humanity and civilization, and was highly suggestive of Turveydrop. Itajuba, the Brazilian member, a provincial professor, was notoriously indolent and not particularly well informed. The Tribunal was memorable rather for the precedent which it established than for the character of the men who composed it or the dignity with which its work was performed. This impression is deepened, not lessened, by the perusal of Mr. Hackett's volume, which adds little to our knowledge of the transactions of that body, while it is calculated to do harm by reviving a feeling against England which was never really justified by the action of the mass of her population during that critical period in our national history.

THE HOUSEHOLD OF THE LAFAYETTES. BY EDITH SICHEL. New York: E. P. Dutton & Co., 1910.

Miss Sichel's volume is an interesting example of a variety of biography which the English, in recent years, have carried to a high degree of perfection, a variety that is not precisely a memoir, nor a history, nor a novel. Alternately, or simultaneously, it seems to partake of all these diverse characters. It is the nearest approximation that can be made to a work of fiction without becoming one entirely. Even when the facts are correctly stated, the atmosphere enveloping them seems to be generated by the imagination. There is an intimacy of treatment which can ordinarily only be expected of the novelist, with his immediate insight into the springs of action. This new class of writers present their subject with all the vivid light of contemporary observation rather than with the sober coloring of historical retrospection. The explanation of this attitude, which so often results in delightful, but not so often in trustworthy, writing, is obvious: the biographer's aim is really to amuse, and not to instruct. If he seeks to convey a moral, it is a form that will be palatable to the most frivolous taste. He is aware that his work has no solid value as history, and yet that it is not unadulterated fiction. Released from all serious historical obligations, his one purpose is to make the time pass pleasantly for the reader; and in this he is generally successful.

Miss Sichel has portrayed with true feminine sympathy and intuition the lives of the female members of the Lafayette household, who were among the loveliest and most pious women of their time. There is a notable delicacy in her treatment of their characters; occasionally a soft and lurking humor; always a vivid perception of their peculiarities, which brings them up very clearly before us.

She has not been so happy in her delineation of Lafayette himself. But this may be the fault of the man. The hero of two worlds was, in some aspects of his character, one of the unintelligible figures of history. What were the qualities which enabled him to play so distinguished a part in three revolutions, and yet never to seem really great? Was his European career almost entirely the result of the glamour of his American? And would he have become so conspicuous in the American Revolution had he offered himself to Washington in the beginning as an unknown young soldier of fortune? A youthful Frenchman of the highest social rank, of large wealth, of powerful interest at court, who had romantically defied every obstacle in his way to rush to the patriots' assistance, such a man might confidently count on a warm reception when he presented himself in the American camp. The personal qualities of the youthful officer—his ardor, energy, and courage—confirmed his inherited claim to a prominent place, and worthily maintained it to the closing scene of Yorktown.

There was nothing in his bearing or actions during his American campaigns to foreshadow Cromwell-Grandson, to which double Mirabeau inaptly likened him afterward. He appears rather as the gay-hearted, debonair, polite, vivid, yet earnest and chivalrous young soldier who won the respect and affection of all who were thrown in his society. Undoubtedly his early prominence in the French Revolution was due to the unique reputation which he had achieved in America, and his association thereby, in the popular mind, with Republican ideals; but he proved himself incapable of stemming the tide, even before it had begun to run very strongly.

Perhaps no one could have done it. Lafayette certainly could not and did not; and, but for his opportune flight, would have perished on the scaffold. More fortunate than Dumouriez, because clapped into prison by the enemies of the Republic, he was permitted to return to France after his release. His Republican spirit, however, was too unbending for him to accept the Napoleonic military despotism as a substitute for the liberal form of government which he preferred; and, in consequence, he remained inactive and neglected throughout the imperial supremacy. Emerging from his obscurity, which had continued during the reigns of both Louis XVIII. and Charles X., he took the leading part in establishing the rule of the citizen-king, and then withdrew, finally, to his country home.

Not to be seduced from the principles which he had learned at the feet of Washington in the atmosphere of the western world, Lafayette nevertheless remained always greater in character than in action. For action in its highest form he was not really fitted, owing to a certain inflexibility of temperament and to an incapacity to control men in large bodies.

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LECTURES ON THE FRENCH REVOLUTION. By LORD ACTON. New York and London: Macmillan Company, 1910.

The vast learning of Lord Acton is displayed in this memorable volume, not in expansion, as in Burton's *Anatomy of Melancholy*, or Buckle's *History of Civilization*, but in extreme compression. In pregnancy and compactness, he recalls Bacon—only he does not permit himself, like either Bacon or Hume, to diverge far into the train of historical reflections suggested by the facts with which he is dealing. The present work has the serious fault which sententiousness is apt to create—it is often obscure, not from the use of inexact language (something foreign to Lord Acton), but from the statement of a fact in a form so brief that it assumes some of the faintness of a generalization. This fault is intensified by the author's taking it for granted that the reader is familiar with the history of the French Revolution even to its minutest particulars. The most profound knowledge of that great event is absolutely necessary to an intelligent understanding of these pages. An important scene is sometimes presented in a single sentence; a mighty popular tendency treated in two. To the reader only partially equipped by previous study to grasp the full meaning of the descriptions and the conclusions much of the volume will seem vague and shadowy. The Revolution glimmers, as it were, behind a veil.

There is nothing to recall the terrific dramatic force of Carlyle's companion masterpiece in this work. Carlyle seized upon a few facts only, but his imagination was able to use them with such power that the whole spirit, the concentrated essence, of the French Revolution is brought vividly before us. Lord Acton, on the other hand, seizes upon many facts; and, as it were, by the blows of another Thor, compresses them into a narrow compass, to the exclusion of all imaginative effects. The work seems rather like the head-lines of a professor's thesis than the actual thesis itself: memoranda strung together connectedly, but intended for future elaboration; a skeleton outline to be clothed with flesh by word of mouth in the lecture-room.

To Americans, the most interesting part of the volume will be the description which the writer gives of the influence of the American Revolution on

the inauguration and expansion of the French Revolution. As Lord Acton points out, it was the Declaration of Independence, not the Federal Constitution, which affected the character of that event. His admiration of Hamilton, who favored monarchy, blinds him to the merits of the other framers. Hamilton alone, he declares, was a man of genius. That great publicist appealed to him as he had done to Talleyrand, because his point of view was so much more in sympathy with European public opinion than the point of view of any other distinguished American.

In this part of his work, Lord Acton is too deferential to those fathers of the Republic who were writers as well as speakers. Otis and Adams are given a disproportionate importance, because they left behind a written record of their political views and impressions. There is no reference to Patrick Henry, presumably because his speeches have practically perished.

In a similar spirit, Lord Acton exalts the work of the voluminous Sieyès, for whom the previous historians of the French Revolution have expressed but small admiration. And he is rather more lenient than is usual in the judgment which he passes on Robespierre. Had Louis XVI. been a strong man, he declares, he would have been saved. This opinion is open to debate. If the king was not strong himself, there were men about him, and at his service, who were certainly strong. In the world-shaking upheaval known as the French Revolution, it is doubtful whether Napoleon himself could, as chief adviser to the monarch, have oppressed the turbulent elements that brought on the Reign of Terror. It was not until the convulsion was subsiding that the opportune whiff of grape-shot was able to put a stop to it finally.

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HISTORICAL AND POLITICAL ESSAYS. BY WILLIAM EDWARD HARTPOLE LECKY. London and New York: Longmans, Green & Co., 1910.

One of Mr. Lecky's last literary acts was to collect the numerous essays which he had, from time to time, contributed to different periodicals or delivered in the form of occasional addresses. He did not live long enough, however, to revise them all for publication. This work has been admirably completed by Mrs. Lecky. The essays, as grouped together in a single volume, possess one quality which we do not always detect in a miscellaneous collection of this kind. As is well known, Mr. Lecky, during most of his life, was absorbed in very extensive literary tasks, and while thus occupied rarely permitted his attention to be diverted to the composition of what may be described as the by-products of a great literary career. When he did so, it was always under the influence of some strong motive—he was either responding to a request for the delivery of a disquisition on some public occasion which appealed to him irresistibly, or the subject of the particular article was one which had an urgent claim on his interest as a citizen or as a friend. This fact gives uniform excellence to all these essays. We detect in them the same conscientiousness of treatment which marked his more ambitious labors; the same careful and discriminating research; the same dignity, purity, and elevation of style; the same keen sensitiveness to all the nobler ideas and sentiments. They also possess a remarkable clarity of thought and a perfect sanity of judgment, and are permeated by that knowledge of men and affairs which comes only to one

who has mingled with the most accomplished persons of his time and studied its various interests at the closest quarters.

How wide were Mr. Lecky's sympathies, and how versatile was his capacity for appreciation, is clearly revealed in the subjects considered in this little volume. With equal ease, grace, and learning, he passes from the study of the tumultuous and passionate life and genius of Madame de Staël to the study of the life and character of the supremely practical and self-contained fifteenth Earl of Derby. He is as much at home in analyzing the career of the great scholar Dean Milman as the career of the great statesman Sir Robert Peel. An eminent writer himself, and a distinguished member of Parliament, his own personal experience enabled him to comprehend the full meaning of such dissimilar individualities and such different achievements. In the essay on Ireland, in the "Light of History," he re-enters a field which had become familiar to him by his prolonged researches for his larger work on that country; but his Catholic feeling and cosmopolitan intellectual interests are even more strikingly exhibited in the essay on "Israel among the Nations." In his "Thoughts on History," he sounds a note of warning against regarding history as a science and not as literature; while in the address on the "Political Value of History" he offers the ablest defense that has ever been made in equal compass of the British attitude toward the American colonies. Quite as notable is the address on "Empire," in which, after weighing the opinions of those who have favored colonial expansion against the opinions of those who have opposed it, he sums up the principles which have guided Englishmen in their government of their colonial dependencies, and describes the benefits which have followed British rule over such diverse and widely dispersed populations.

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FRANCE IN THE AMERICAN REVOLUTION. BY JAMES BRECK PERKINS.  
Boston and New York: Houghton, Mifflin & Co., 1911.

Would the American colonies have won their independence had they received no aid from France? Such is the general question which Mr. Perkins discusses in all its aspects in this lucid but occasionally somewhat prolix monograph. But for this intervention, he declares in substance, the struggle would almost certainly have ended in disaster. Is this view correct? As a matter of fact, apart from Beaumarchais's shipment of arms and ammunition, France afforded the Americans no particular assistance, even indirectly, until after the victory at Saratoga. The only act of French co-operation that told emphatically in favor of the Colonists was De Grasse's interposition in the Chesapeake, which, by preventing the English fleet from rescuing Cornwallis, left him to be captured by the combined American and French land forces.

It does not follow positively that, had De Grasse not been present in those waters at that precise moment, American liberties would have perished. By this time the state of fighting had become normal with the Colonists, and the length of the period over which that fighting had continued was in itself an encouragement to its indefinite prolongation, if necessary to final success. All the chances were that the Americans would have worn out the English rather than that the English would have worn out the Americans. It is now generally acknowledged that the English

pressed the contest with more zeal than they would have done had the Americans (who were their fellow-subjects and of the same race as themselves) been their only opponents. The presence of their immemorial enemies on the ground probably had the effect of drawing out the war by making the English resolute to suffer no humiliation at their hands.

Mr. Perkins appears to most advantage in his description of the characters and careers of particular individuals rather than in his account of a general course of events. What he writes of Beaumarchais and Lafayette, for instance, is vivid and entertaining; and he presents Beaumarchais especially from new points of view. His tribute to Franklin, on the other hand, follows too closely the older judgment, and it causes him to reflect too strongly on the associates of that great man in Paris—Lee, Adams, and Deane—with whom he was at times at odds. There are now proofs that the opinion so generally held as to the supposed extreme value of Franklin's services in France has been exaggerated by the pride which the Americans have felt in the impression which he undoubtedly made in that country as a man and philosopher rather than as a diplomat. They have taken popular esteem for the person as irrefutable evidence of the most substantial achievements as an envoy. Mr. Perkins himself falls under the glamour of Franklin's reputation so far as to say "that the results of his mission in France could have been accomplished by no one else; and without them it is by no means certain that American independence would have been won until many years later."

In opposition to this view, it may be pointed out that, long before Franklin arrived in Paris, the attitude of the French Government toward the Colonists was distinctly friendly, and that that Government had already assisted them secretly. Had it not been for the success of Gates at Saratoga, not all the suave arts of the American philosopher could have induced the French to support the American cause openly. Mr. Perkins admits that it was not Franklin's, but Lafayette's, personal appeal that moved the French authorities to send out the army under Rochambeau and the fleet under D'Estaing. These were really the only factors in the French connection which accomplished highly important results.

Izard, Lee, and Adams have all been accused of jealousy in reflecting on Franklin, but does not Mr. Perkins himself acknowledge that this illustrious American was, at this time, "old, infirm, fond of pleasure, and by no means an accurate man of business." This is practically John Adams's charge. Franklin, he asserted, was kept in a "constant state of dissipation" by philandering with charming French women and theorizing with learned French philosophers. Indeed, according to Adams, he was so much absorbed in social frivolities that diverted his vanity, and in scientific discussions that interested his reason, that he failed to give any real attention to his diplomatic duties. Certainly, to our modern perceptions, this animadversion does not seem hypercritical when we recall the historical spectacle of "the venerable sage, with his gray hairs flowing down upon his shoulders, his staff in his hand, and the spectacles of wisdom on his nose," permitting himself to be crowned with flowers by women of fashion, sometimes of questionable reputation.

If Mr. Perkins's characterization of John Paul Jones be correct, it is a cause for surprise that the United States should have been anxious to recover his remains and remove them to this country. He is described

in this volume as a "freebooter," a "hardy corsair," a "buccaneer." His famous ship was "a piratical craft." As Jones was sailing under letters of marque legitimately issued, it would appear that he deserved a more honorable designation.

There is a disposition on Mr. Perkins's part to confuse the American people at the time of the Revolution with the Puritans of New England. "Our Puritan forefathers" is a common expression with him when plainly referring to Americans collectively. He speaks of the Americans' "rigorous theology"; of their "strict modes of life." Such terms have certainly no application to the diversified religious feeling and the bountiful style of life prevailing in all the Southern colonies. They are hardly true of New York. They are really only true of New England.

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SECRET SOCIETIES AND THE FRENCH REVOLUTION, TOGETHER WITH SOME KINDRED STUDIES. BY UNA BIRCH. London and New York: John Lane, 1911.

The most important essay in this volume is the first, which describes the influence of the secret societies in bringing on the French Revolution. The two that follow, the "Comte de Saint-Germain" and "Religious Liberty and the French Revolution," either touch other phases of that great event or deal with subjects more or less germane to it. The fourth and concluding essay in the series, "Madame de Staël and Napoleon," adds nothing to our knowledge of the same period, nor does it throw any new light on the most diverting personal comedy in European history, unless we except the episode of Voltaire and Frederick the Great.

The article on secret societies, however, is a singularly vivid contribution of new facts to the history of those powerful organizations, although it is quite palpable that the author exaggerates the part which they really played in precipitating the tragedy. They reflected rather than originated the sentiment at large in France, which in its final explosion in the Revolution was to alter the political face of the world. Many historians, indeed, have gone so far as to deny that these societies had any influence whatever in subverting the old order. Clerical writers alone have attributed to them a certain degree of power over the movements of the time, a power directed not to the improvement of the people, but to the overthrow of the Church, the destruction of Christianity, and the erection of Paganism in its place.

At first the secret societies of France seem to have devoted themselves to study, experiment, and speculation. It was reserved for the Utopians of the eighteenth century to use these societies for the purpose of social regeneration. They assisted actively and zealously in spreading abroad the seeds of the humanitarian movement on French soil. Louis XV. tried to discourage them. Clement XII. issued a bull against them. All without effect. In 1738 they joined in favoring the writing of the great *Encyclopædia*; and it was due to their subscriptions that Diderot, in 1741, was able to begin that memorable undertaking. Freedom, love, equality, and brotherhood were all advocated by these societies half a century before the Revolution broke out. Reorganized in one grand lodge in 1771, they carried on their propaganda with ever-growing energy and success. Under their indirect influence there sprang

up a large number of independent secret organizations, formed upon the same general model, but holding different doctrines while pursuing the same general ends. It was to the head of one of these sects that the Revolution owed the famous phrase, "Liberty, Equality, Fraternity"; to another, the equally famous calendar of the months.

It is a fact of significance, as showing the view which all these secret societies, regular or irregular, took of their several missions, that, early in 1789, every lodge was formally closed as if they united in thinking that the work of liberation had been completed, and that nothing was left for them to do. It is possible, however, that they really feared lest they should, in those dangerous times, become objects of police suspicion, and thus expose their members to the extreme penalties of the law.

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NARRATIVES OF EARLY MARYLAND, 1633-1684. Edited by CLAYTON H. HALL, LL.B., A.M. New York: Charles Scribner's Sons, 1911.

NARRATIVES OF EARLY CAROLINA, 1650-1708. Edited by ALEXANDER S. SALLY, JR. New York: Charles Scribner's Sons, 1911.

The interesting series of original narratives that throw light on the early condition of the colonies has now been further enriched by two volumes relating to Maryland and South Carolina. The first pages of both, which deal with the primeval characteristics of the two provinces, possess the same subtle quality that lurked in the preceding issues—a quality as elusive, but as delightful, as the fragrance of flowers, shrubs, and pines that greeted the voyagers as they approached the virgin coasts of the South and mid-Atlantic waters even before the shore-line itself rose to view. In a small compass, it is old Hakluyt all over again; and just as we do in reading that ancient worthy, so here too we obtain a charming impression of a new world as fresh as when it burst upon the sight of these indefatigable explorers and minute chroniclers. We find in these pages the intimate records of their observations made by these men in the very heart of the verdant wilderness. The shoals of fish, the vast flocks of wild pigeons, the countless herds of deer, the swarms of locusts, the towering trees, the masses of running vines—all were noted; so also was the richness of soil, the purity of the springs and brooks, the peculiarities of the climate at the different seasons; but, above all, the habits of the aborigines—their houses, their dress, food, weapons, tools, appearance, bearing, laws, and customs.

The narratives which follow those relating to the first explorations give an account of the pioneers who founded the several communities, the hardships which they endured, the dangers which they passed through, the great and rugged qualities which they exhibited in their novel situation. Then we have the history of these communities as steadily crystallizing and growing organisms, but still presenting all the primitive conditions, such as the extreme isolation of the life, the almost complete absence of the improving influences of education, the entire indifference to the social conventions of the Old World. Then, as each organism continues to expand, bitter political factions among the people arise, keen religious controversies spring up, and sharp social divisions gradually emerge to view. Each community has now become firmly established, and in the play of

its varied interests offers all the characteristics of the older States in a provincial form.

The two volumes immediately under review contain much to demonstrate how widely the several colonies had diverged in character by the end of the first century; how dissimilar were the social and political problems which they had to face and solve; how repugnant they were to one another in religious sentiment; how different they were in the products upon which their inhabitants had to depend for a subsistence and the accumulation of wealth. The general atmosphere of Maryland was as tolerant of Roman Catholicism as that of South Carolina was of Protestantism, although denominational controversies were not unknown in either. The one relied on tobacco for a livelihood; the other on indigo and rice. Both, however, were distinctly Southern in maintaining the plantation system; both held slaves in large numbers; and both cultivated the spirit of a liberal and bountiful life.

The two volumes containing the Maryland and South Carolina narratives are subject to the same criticism as the volumes relating to the other colonies which preceded them. Excepting the earliest sets of Narratives, which had to be inserted, as there were no substitutes for them, the Narratives included seem to have been more or less arbitrarily selected. There are others of equal aptness which might have been chosen. Indeed, some of those passed by appear to be even more illustrative of the prevailing conditions than some which were preferred. As is well known, the number of documents transmitted to England by the colonial authorities was very great, all of which are accessible in the British Record Office, and some of which have been reprinted in this country. It was really an embarrassment of riches which the editors of those volumes had to contend with. After the sections devoted to the earliest of the Narratives, it might have been more luminous to have inserted, not, as they have done, whole Narratives, but parts of Narratives. More breadth and variety would thus have been obtained; an impression of repetition and scantiness avoided.

Some of the Narratives in the South Carolina volume might have been omitted to particular advantage. Why should De Foe's padded and one-sided treatise have been inserted? He had never visited the colony, and knew nothing about it at first hand. So with the two chapters from Oldmixon. That historian declared that he had read those chapters to South-Carolinians visiting England; but, if so, as the editor of the *South Carolina Narratives* acknowledges frankly, they must have been exceedingly ignorant, for the pages are strewn with mistakes. Oldmixon's "imaginings" are characterized by the same editor as "lively"; his geography as often erroneous, and his local nomenclature as not infrequently confused. All this being admitted, ought these two chapters to have been reprinted at all?

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ESSAYS MODERN AND ELIZABETHAN. BY EDWARD DOWDEN, LL.D., Litt.D., D.C.L. Professor of English Literature, University of Dublin. London: J. M. Dent & Sons, Ltd. New York: E. P. Dutton & Company, 1910.

It is hardly necessary to say, perhaps, that these fourteen essays of Professor Dowden's show a range and variety of intellectual interest

and of sympathetic insight that are both delightful and rare. For in this day of over-specialization scholarship and culture are becoming rather precious. What is gained in boasted "practical information" and "utility" on the one hand is lost in a shrinkage of the interpenetrative imagination on the other; and the intellectual horizons seem, in some directions, instead of widening out before us, to be closing in. To those who know the author only as one of the foremost Shakespeareans, the breadth of intellectual outlook which this volume affords ought to prove stimulating. For interest begets interest, and to watch the pleasure of another always makes us eager to partake of that pleasure. In this sense, too, do men labor, and other men enter their labors; and part of the wonder and charm of all forms of mental activity and delight are, that the more they are shared the less are they diminished or divided. Minds and personalities so different as Pater and Heine, Ibsen and Cowley, as Goethe and De Marsay, an eighteenth-century mystic, are here sympathetically understood, and are placed distinctly before us. As a piece of character-drawing, without pressing conclusions, that of De Marsay is quite noticeable and significant. Swedenborg still awaits a sympathetic interpreter, a mind metaphysical, scientific, and dramatic enough to comprehend and make sufficiently plain one of the world's great mystics. And perhaps Zinzendorf, too, is yet to have his adequate biographer. There are touches of historic insight and of philosophic thought in the sketch of De Marsay which seem to indicate that Professor Dowden might have won yet other laurels in fields apart from those he has made so peculiarly his own.

The influence of Goethe, "Prince of the Moderns," has always been strong with Professor Dowden, and is nowhere more clearly seen than in the essay "Goethe's West-Eastern Divan," snatches of which he has poetically and delightfully translated. In a fine sense minds are the most wonderful of parasites, mind growing upon mind, mind upon mind, until we have new natural forms of almost magic beauty. Such is the "West-Eastern Divan," a dream of a dream, a third or fourth in the transmutation of energy from its original source. "This East of Goethe's imagination," as Dowden calls it, a swan-song of youth, if one chooses to think it so—like all imaginative creations, may be variously interpreted. That Professor Dowden has read into it some of the quality of his own spirit, has lent it an *esprit* and poise that it does not everywhere for every one possess, only enhances the interest of his deeply sympathetic criticism. In the intellectual life, Goethe of course is a force to be reckoned with by all, and, whether possessed by him or possessing him, his is a mind that serves as a touchstone to reveal the quality of others. "Greatest of critics" he may be, as Professor Dowden calls him, yet even Goethe's criticisms may be taken with large reservations.

The essay on Pater, too, is one well worth absorbing. Pater will always be more or less caviare to the general. His delicate refractions of life, his lunar beauty of thought and expression, make him a sort of Franz Hals of literature. For Pater fairly revels—if so robust a word as *revels* may rightly be applied to the author of *Marius*—revels in pearly grays of feeling and thought as Hals does in color. Ultimately, both indicate form rather than express it, and yet to do this requires a rare mastery of artistic skill, whether it be in the writer or in the painter.

And in a day when, if distinctions are not becoming blurred, they are yet easily overlooked, Pater surely tends to keep alive just this fine sense of distinctions. In this short appreciation, therefore, Professor Dowden helps to make Pater accessible to the general reader, and this is no mean aid.

Of Heine, too, tormented by the the Imp of the Perverse—or was he himself the Imp?—that Jewish Ariel, a bundle of moods rather than a character, a spirit whose swallow-like dartings are hard to follow, a paradoxical creature proving himself by contraries—Professor Dowden has much to say that is admirable and suggestive. How one may enter into other lives by study and imagination, and become cosmopolitan in the only true sense, a lover of life and catholic in sympathy, these essays go far to prove. And they can but quicken intellectual interest and increase knowledge.

## CONTRIBUTORS TO THIS NUMBER

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### GEORGE F. EDMUNDS

ranks with the most distinguished of United States Senators. He was born in Vermont in 1828 and represented that State in the Upper House from 1866 to 1891, when he resigned. He was the author of the famous act for the suppression of polygamy passed in 1882, was a member of the Electoral Commission in 1877, and served for many years as Chairman of the Judiciary Committee, being universally recognized as one of the foremost constitutional lawyers of the country. President Grant offered him the appointment as judge of the second Circuit Court and later as Minister to England. Both President Hayes and President Arthur offered him the position of Associate Justice of the Supreme Court. He scrupulously upheld the dignity of the Senate and regarded the seeking of a public office with such aversion that for a full year before coming up for re-election he would not even visit his State. The Vermonters, however, held him in the highest honor and would undoubtedly have returned him to the end of his days. In 1880 he received 34 votes for the Presidential nomination in the Republican convention and four years later 93, including those of George William Curtis and Theodore Roosevelt. Senator Edmunds has never divulged his reasons for withdrawing from public life. But his interest in political questions has not waned, and, now in his eighty-fourth year, his quite exceptional mind is as clear as ever and his expression, as will be seen, no less incisive than in former years.

### JOHN CASTELL HOPKINS

was born in Iowa, the son of British parents, but has lived in Canada for the past forty years. Since 1890 he has followed journalism as a profession, at one time being associate editor of the *Toronto Empire*. A prolific writer, he has written many volumes dealing with British and Canadian history and biography and is also a frequent contributor to the magazines. He held the office of President of the Empire Club of Canada, the largest Imperialistic Society in the Dominion, and

is actively engaged in the publication of *The Canadian Annual Review of Public Affairs*.

**WILLIAM MACDONALD**

has been Professor of American History in Brown University since 1901. He graduated from Harvard in 1892, and from 1893 to 1901 was Professor of History and Political Science in Bowdoin College. He has edited several volumes of historical documents widely used as university text-books, and has written *The History and Government of Maine* and *Jacksonian Democracy*. In 1904-06 he took an active part in the Lincoln Party reform movement in Rhode Island.

**MAJOR-GENERAL W. H. CARTER, U.S.A.**

was born in Nashville, Tennessee. For twenty-four years after graduating at the United States Military Academy he was in active service on the frontier. His first experience was with the Eighth Infantry, which he joined, as second lieutenant, in 1873. In 1874 he was transferred to the Sixth Cavalry, and in 1879 he was promoted to be first lieutenant and regimental quartermaster. He was advanced to the command of a company in the Sixth Cavalry in 1889, and he received his majority in 1897, when he was appointed Assistant Adjutant-General of the United States Army. His present commission he has held since 1909, and is a member of the General Staff. The acts of Congress which made the construction of the army what it is to-day were drafted by him. General Carter holds a medal of honor which was awarded to him for distinguished bravery in action against the Apache Indians at Cibicu Creek, Arizona, on the 30th of August, 1881. He is the author of *Horses, Saddles, and Bridles, An Historical Sketch of the Sixth United States Cavalry, From Yorktown to Santiago* and *Old Army Sketches*. He has also contributed to this REVIEW.

**STEPHEN BONSAI**

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diplomatic service as Secretary of Legation and Chargé d'Affaires at Peking, Madrid, Tokio, and Korea. He is the author of numerous books.

JAMES W. CROOK,

a native of Canada, was graduated from Oberlin College, Oberlin, Ohio, in 1891. He did graduate work in economics at the universities of Wisconsin, Berlin, Germany, and Columbia, New York City, and received his degree of Doctor of Philosophy from Columbia in 1898. At present he is Professor of Economics at Amherst College, where he has been since 1895. He is the author of a work on *German Wage Theories*.

FLORENCE EARLE COATES

ranks high among American poets, a position given her by Matthew Arnold upon the occasion of his visit to America. Her verse is well known to the readers of the leading periodicals, as well as in her volumes of poems under the titles *Poems*, *Thine and Mine*, and *Lyrics of Life*.

O. R. HOWARD THOMSON,

librarian of the James V. Brown Library, was born in London, 1873, and educated in Philadelphia. In addition to professional papers, he is an occasional contributor of poems and critical articles to the magazines; the author of *Classification of Prose Fiction* and the *History of the Bucktails*; editor of the *Chronicles of Christ Church, Williamsport*, and a lecturer on English and American poetry.

FLORENCE L. RAVENEL

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